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No. 973 14

IN THE

Supreme Court of the United States.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL ET AL.,
Respondents.

PETITIONER'S REPLY TO BRIEF FOR RESPONDENTS.

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.....TERM, A. D. 1917.

AMERICAN STEEL FOUNDRIES,
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THE TRI-CITY CENTRAL TRADES COUNCIL, ET AL.,
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RESPONSE TO PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE SUPREME COURT:

We do not believe this to be a case for review by the Supreme Court. As has been said "The Supreme Court may extend Certiorari to every case pending in the U. S. Circuit Court of Appeals * * * but this power will be sparingly exercised and is only properly invoked where questions of gravity and importance are involved."

In re Woods, Petitioner, 143 U. S. 202.
Lau Ow Bew vs. U. S., 144 U. S. 47 - 55.
Forsyth vs. Hammond, 166 U. S. 506 - 14.
Lau Ow Bew, Petitioner, 141 U. S. 583.
The New York, 175 U. S. 187.

STATEMENT.

The statement of Petitioner as it appears on page 8 is, in part, a correct statement of the facts. According to the evidence, Cook, one of the employees did not know there had been a reduction of wages at the plant until he received his first pay (Ab. 70). Churchill quit when the strike was called (Ab. 66). It was not to remonstrate with the American Steel Foundries people that Earl Galloway, the President of the Tri-City Central Trades Council, called at the Mill about the 20th day of April, 1914.

The men in the employ of the Mill, who were members of Unions having representation in the Tri-City Central Trades Council, had filed complaint with the Central Trades Council, because their wages had been reduced, and at their request a Committee was appointed to confer with the Managament (Ab. 54). Galloway, by virtue of being President, was made Chairman of the Committee and he was the only one the Company would admit to the Plant (Ab. 55). The Superintendent found fault because none of the Committee were employees that particular day. But Galloway informed him that some of the Committee had been and were members of the different locals (Ab. 55).

Mr. Walcher, the Superintendent, informed Galloway that he would not meet with any representative of organized labor (Ab. 55); that if anybody around that plant had a grievance to come as individuals (Ab. 55). Just how many employees were members of Unions represented in the Trades Council we do not know, but Walcher, the Superintendent, testified that probably 80 or 90 per cent (Ab. 51). "We positively did not propose to recognize any of these Labor Unions. I told him, Galloway, we had nothing to arbitrate (Ab. 52). We run an open shop; don't recognize organized labor, merely deal with our employees (Ab. 32). I refused to deal with Galloway because he was representing a labor organization" (Ab. 32). Just how many employees were out owing to the reduction of wages we can only approximate. The Superintendent testified that when running full force there were about 1600 men, but at the time of the strike, probably about 300 (Ab. 26). When the Granite City Commercial Club endeavored to bring about a settlement and a Committee from the Central Trades met with representatives of such Club, the City officials and representatives of said Mill (Ab. 55), Walcher, the Superintendent, said: "We have no arbitration offer to make to these laboring men" (Ab. 52). After Galloway reported the result of such interview to the Tri-City Central Trades Council a strike was ordered and while assaults may have been committed, as to whether such assaults were committed " by strikers" or "strike breakers" or "outside parties" there is a confliet in the evidence.

The reason Mayor Kirkpatrick, of Granite City, did not furnish police is because he did not think it necessary (Ab. 59)

and for like reason no deputy sheriffs were furnished by Sheriff Henry (Ab. 61). At the joint conference held at the instance of the Commercial Club, Galloway said to Davis, the President of the Mill Company: "One of your men tried to shoot one of our boys last night" (Ab. 56), and Mr. Davis replied: "The only trouble with that fellow was his aim was not good enough" (Ab. 56). The Mayor overheard this (Ab. 58). Hence, it may be possible that the Mill people were seeking to bring on a conflict between their strike-breakers and the pickets to give them an excuse to go into Court and ask for an injunction. No one connected with the Trades Council, nor did any of the defendants threaten the destruction of property. Walcher, the Superintendent, testified that he heard it, but as to who said it, or from whom he heard it, he had no recollection (Ab. 30). No other person made such charge.

That part of the statement which says that the Tri-City Central Trades Council was "a meddler" (P. 12) is erroneous.

Galloway, the President of the Tri-City Central Trades Council testified: "After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation" (Ab. 55).

Cavanagh, the Secretary of such Trades Council testified: "A communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to

have the wages restored. * * * Ten or eleven trades were represented at the meeting on the 19th. I was not at the meeting on the 20th when the committee reported" (Ab. 72).

Just how many employees of the Foundries were members of Locals represented in such Central Trades Council is not stated unless we take the testimony of Walcher, Superintendent of the plant, who said he thought about 80 or 90 per cent (Ab. 51). The ruling of the U. S. Circuit Court of Appeals in reversing the cause and directing the Court below to modify the decree, says: "In so far as the decree restrains all picketing and all persuasion and all interference with the Plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein" (Ab. 114).

The Complaint of the defendants in this case is based on the ground that the District Judge held it to be unlawful for wage earners to combine **without regard to lawless acts.** The learned Judge said: "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this Complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful" (Ab. 78). The defendants took exception to such holding and appealed. The District Judge held furthermore that "There is no such thing as peaceable picketing" (Ab. 80). To this holding also the defendants dissented. Upon both propositions the defendants were sustained by the U. S. Circuit Court of Appeals. Nor was the ruling of such Court of Appeals by a divided Court.

BRIEF AND ARGUMENT.

We shall take up the points in the order, as they appear, in Petitioner's Brief on Pages 5, 6 and 7.

I.

The contention of petitioner to the effect, "that upon the undisputed evidence in the record * * * the Circuit Court of Appeals erroneously reversed the decree of the District Court." is without merit, for the reason. The District Judge predicated his opinion upon what constituted "an **unlawful combination.**" "This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purpose of that combination is to prevent this Complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful" (Ab. 78). As far as the combination itself is concerned there was no dispute, but the Tri-City Central Trades Council, and other defendants, contend that such a combination was not unlawful. The trial Judge in his opinion, on page 80, said: "There is no such thing as peaceful picketing." The contention of the Tri-City Central Trades Council is that there is such a thing as "peaceful picketing" and the evidence on this point is conclusive. On

page 81 the District Judge said: "The injunction may go this much further, it may prohibit absolutely picketing for the purpose of executing this unlawful purpose."

It was upon these two questions, as to what constitutes an **unlawful combination,** and the right to do **peaceable picketing,** that Complainant and the Defendant disagreed and the issue upon these two questions was squarely joined.

When the plant resumed operations they reduced the scale of wages from two to nine cents per hour. Because of this fact a controversy arose between employer and employees. The Tri-City Central Trades Council, while composed of representatives of 37 Labor Unions of Granite City, Madison and Venice, maintained it was not an unlawful combination. According to the testimony of **Galloway**, the President, its object was "to better the conditions of the working classes" (Ab. 54). "To settle all disputes between employer and employees in relation to wages, etc., by arbitration instead of strike. * * * We tried to carry out that section (Ab. 54). The Central Trades Council is not a secret organization. Its meetings are open, its minutes are printed and promulgated and sent to all affiliated bodies" (Ab. 55).

Cavanagh, the Secretary, testified that "The object of the Council is to bring the laboring class into closer affiliation and secure better working conditions and wages for the workingmen" (Ab. 72).

The major portion of the employes of the American Steel Foundries were members of the various Locals which comprise

the Central Trades Council. Just what number it does not appear, but Walcher, the Superintendent of the Mill, testified: "We only had called for in round numbers, three hundred men and laid off approximately thirteen hundred. Eighty or ninety percent of the employees were old men. I assume these men were members of the various organizations" (Ab. 51). Galloway, the President, testified: "After the Council received complaints about the reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation" (Ab. 55).

Cavanagh, the Secretary, testified that "At a regular meeting on April 15th of the Tri-City Central Trades Council, a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages restored. The meeting was called for Sunday, the 19th, and ten or eleven trades were represented (Ab. 72). We had complaints from the men who worked at the Foundry (Ab. 72). Our organization is not secret. Our meetings are not secret" (Ab. 72).

Why the District Judge should hold such a combination to be unlawful is beyond our comprehension.

"Conspiracy" has been defined to be a combination between two or more persons to do a criminal or an unlawful act,

or a lawful act, by criminal or unlawful means," Cyc. Vol. 8, P. 620.

In the case at bar Complainant failed to prove a "conspiracy." Nevertheless the District Judge held it to be a "conspiracy" for workingmen to combine and demand the restoration of a former scale of wages (Ab. 78).

While the District Judge did hold that it was unlawful for wage earners to combine to compel the employer to pay a certain scale of wages, the U. S. Circuit Court of Appeals, on appeal, said: "From the record here we can reach no other concluson than that the object of this strike was to secure for Plaintiff's employees the November wage scale of the Union. Nothing appears in the record to indicate that this was not in good faith" (Ab. 112). The Court held furthermore, "In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed" (Ab. 112).

II.

As to the charge of conspiracy or unlawful combination there was not one scintilla of evidence. Quite true it was alleged in the bill but there was no proof. When Galloway, the President of the Tri-City Central Trades Council, testified, Counsel for Petitioner on Cross Examination sought to have him admit as much, but all he said was, "Our purpose in sending the pickets down there was not exactly to enforce an increase of wages but to try to encourage working men to quit work so the American Steel Foundries would be compelled to raise the wages to the standard" Ab. 57). "The pickets were not authorized to commit any unlawful acts, that is not the way the Council carries on its business" (Ab. 57).

Cavanagh, Secretary of the Central Trades Council, testified: "The object of the Central Trades council is to bring the laboring classes into closer affiliation and secure better working conditions and wages for the workingmen. No one connected with the Council authorized any unlawful act" (Ab. 72). **Wade,** Treasurer of the Central Body, testified: "We didn't authorize any unlawful or wrongful act" (Ab. 73).

The U. S. Circuit Court of Appeals, Fourth Circuit, in a recent case said:

"A combination to organize employees in a certain business to secure higher wages by peaceable and lawful methods does not constitute a conspiracy."

Mitchell v. Hitchman Coal & Coke Co. 214 Fed. 685.
(Decided 1914.)
(Opinion District Judge, 202 Fed. 512, reversed.)

Nor was the "threats of an organizer to organize the employees of Complainant's mine or shut it down, sufficient to show a conspiracy."

214 Fed. 685.

Notwithstanding the District Court held otherwise, "Evidence on review held insufficient to establish a conspiracy on the part of the officers and representatives of Labor Unions to organize the employees of Complainant's mine by unlawful means" (Id).

In a very recent case it was held, "Laborers may combine, forming unions to protect their rights and they have a right to persuade Complainant's employees to leave its service * * * they may picket their employer's business."

Alaska S. S. Co. v. International Long Shoremen's Assn. of Puget Sound, 230 Fed 964. (Decided 1916.)

On page 969 appears an opinion which was written by Justice Holmes while sitting on the Supreme Bench of Mass. (167 Mass. 92).

"If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible returns, it must be true, when combined, they have the same liberty that combined capital has to * * * bestowal or refusal of these advantages which they otherwise lawfully control" (P. 969).

On Volume 8 of Cyc. on page 637 we find the following:

"In the earlier decisions, it was held that while persons may each singly refuse to work unless they receive an advance in wages, yet if they do so by preconcert, or association, they may be punished as for a conspiracy * * *.

The more recent English decisions, influenced doubtless by legislation on the subject, hold that workmen have a right while perfectly free of enjoyment to agree among themselves not to go in to any employment unless they can get a certain rate of wages. * * *

The doctrine of these later decisions is also recognized in America. Workmen may lawfully combine to obtain as much wages as they may after consideration agree to insist upon receiving for their work."

III.

Among other cases cited is Wabash R. R. vs. Hannihan, 121 Fed. 563.

In Nation Fire etc. v. Mason Builders Assn., 169 Fed. 259, the U. S. Circuit Court of Appeals, Second Circuit, wherein a charge of combination between Mason Builders Assn. and Bricklayers Union was alleged; on Page 265 the Court said: "The direct object or purpose of a combination furnishes the proving test of its legality. It is not every injury inflicted upon third persons in its operation that renders a combination unlawful." * * *

"An agreement providing that no member of the Bricklayers' Union should work for any contractor who did not comply with the rules. Held, although such an agreement operated to complainants' prejudice, it was not a conspiracy against which complainant had any remedy" (P. 261).

And, in the case at bar, even though an agreement had been made whereby the Mill Company was to, if possible, by lawful means make it impossible to operate the Mill unless such Mill Company agree to an increase of wages, or submit the matter to arbitration, it cannot be said that the wage earners had exceeded their rights.

An unlawful conspiracy is defined to be "A combination between two or more persons to do an unlawful or criminal act, or to do a lawful act by criminal or unlawful means."

Goldfield Con. Mines Co. vs. Miners' Union, 159 Fed. 500. On Page 519 the Court said: "When free from contract obligations workmen have a legal right, singly, collectively or as a Union to strike; and having this right they have the further right to use such lawful means to make the strike effective as are not in conflict with the rights of others."

In the case of Bettner v. West Va., etc. Coal Co., 214 Fed. 716 the U. S. Circuit Court of Appeals for the Fourth Circuit (1914) held: "Strikers may not be restrained from using persuasion and other peaceable methods."

In the case of L. W. & W. R. R. v. Switchmen's Union, 158 Fed. 541, where an injunction was sought to restrain Switchmen from violating a contract by striking, the Court said: "I am inclined to think that defendants had the right to select a Committee to request a conference * * * and they could, if they chose to do so, delegate an officer of the Switchmen's Union to represent them and to advocate an adjustment of differences" (P. 545). And that is just what the employees of the Mill Company did in this case, delegate such duty to the Tri-City Central Trades Council.

In the case of Kelly v. Robinson, 187 Fed. 415, the U. S. Circuit Court of Appeals for the Eighth Circuit decided: "Union or other laborers have the right to quit the service * * * and they may by peaceable means persuade others to quit the service" (P. 417).

The U. S. Circuit Court of Appeals, Seventh Circuit, in the case of Arthur v. Oakes et al, 63 Fed. 310-27, wherein a District Judge had issued an injunction restraining engineers, conductors and switchmen from in any manner interfering with the operation of the road" * * *. On appeal, Justice Harlan said: "The Court below should have eliminated from the writ of injunction the words: 'And from so quitting the service of said receiver with, or without, notice, as to cripple the property or prevent or hinder the operation of said railroad' (P. 319). "The exercise

of employees of their right to quit in consequence of a reduction of wages could not be made to depend upon consideration of hardships or inconvenience to others" (P. 319).

And, in the case at bar, the Mill Company may not complain because the operation of the Mill is interfered with, for the reason the Company had the alternative, to either restore the former scale of wages, or arbitrate. They declined the proffer. The act of the Tri-City Central Trades Council was therefore a lawful act and as the Court of Appeals has said on Page 89, "Nothing appears in the record to indicate that this was not in good faith, or to raise a suspicion that the strike was a mere cloak to cover a deliberate purpose to interfere with the Plaintiff's conduct of its business, or to injure and destroy its business and property."

In the Hitchman Coal Co. v. Mitchell, 202 Fed. 512, the District Judge held that "The United Mine Workers of America was an unlawful conspiracy to injure the business of mine operators." But on appeal to the U. S. Circuit Court of Appeals for the Fourth Circuit (214 Fed. 685) the Court said: "He who seeks equity must do equity." "In other words he must come into Court with clean hands. If the Courts of this Country should by injunction relief protect the mine owner in the enjoyment of his property rights and restrain the laboring people from organizing their forces, by deciding such organization unlawful, would not the employer be in position to dictate the terms, or wages, of employees." * * *

"It should be definitely understood that the laboring men

have the right to use peaceable and lawful methods to unite their forces in order to improve their condition as respects their ability to earn a decent living" (Page 715). "For reasons set forth the decree of the Court below is reversed • • • at Plaintiff's cost" (P. 716).

And why was such Miners' Union held to be an unlawful combination by such District Judge? Because the trial Judge held, "in pursuit of its unlawful purposes to secure control of the monoply of mine labor" (P. 556). And what was this unlawful purpose? Nothing whatever, except the Miners' Union sought to make it obligatory that the Union be recognized. And in the case at bar all the Central Trades Council demanded was the restoration of the former scale of wages, or arbitration (Ab. 55).

"Notwithstanding, the Code of West Virginia provides that no persons, or combination of persons, by force, threats, menaces, or intimidation of any kind shall prevent or attempt to prevent from working in or about any mine any person or persons who have a lawful right to work about the same and who desire to so work. It was held that the Trade Union known as the United Mine Workers of America organized to secure reasonable wages and better working conditions among the mine workers of the United States by concerted effort to compel by peaceable means the improvement of mining conditions is not an unlawful organization, or combination, either under the statute, or at common law."

Mitchell vs. Hitchmann, etc., 214 Fed. 685.

On Page 696 the Court of appeals said:

"The learned trial Judge insists that the common law under which labor organizations have been declared unlawful in England is still in force in West Virginia and that therefore the Miners' Union is unlawful. * * * While there are decisions at Common law by the Court of England in support of such theory, yet such rule has not prevailed in this country except in a few of the earlier decisions of our Courts. Even in England combinations of this character were only proceeded against, as a general rule, where they were criminal or prohibited by statutory law." Id.

"The growth of development of the common law occurred when property rights were recognized as paramount to personal rights. At that time there was little if any concert of action on the part of the laboring people owing to their helpless condition, due in main to their ignorance. Their domination by the land owner and the capitalist was absolute. * * * Under such circumstances they were as helpless almost as slaves, and, is it any wonder, that we have so many decisions at common law * * * as well as the enactment of statutory laws, by virtue of which it was almost a physical impossibility for those who earned their living by honest toil to accomplish, by organized effort, those things necessary to elevate them to a place where they could assert those rights so essential to their welfare. The industrial development of the world within the last half century has been such as to render it necessary for the Courts to take a broader and more comprehensive view than formerly of matters pertaining to the relation of capital and labor." (P. 698) Id.

"It is now recognized by all civilized countries that labor is the basis of all wealth, and without which it is utterly impossible to accomplish anything in the industrial world" (P. 699).

"In this instance the Plaintiff has adopted a policy by which only non-union men be employed. If plaintiff may for the purpose of protecting its interests adopt a policy by which only non-union men can secure employment * * * by what process of reasoning can it be held that the defendant may not adopt the same method in order to protect their interests." (P. 703.) Id.

"Surely we have not reached the point where capital with its strong arm may adopt a plan like this for protecting its interests, while on the other hand the laboring classes are to be denied the protection of the law where they are attempting to assert their rights." (P. 704.) Id.

We have not attempted to defend lawlessness, if there was any, but we have contended for the right to do peaceable picketing. On this point we are willing that all of the Defendant's testimony and all of Complainant's witnesses be disregarded **except the officials of Complainant Steel Foundries**:

Hall, the Master Mechanic, testified: I never saw any acts of violence, nor any of the assaults. I only saw them stop the men and try to induce them to quit work" (Ab. 50).

Walcher, the Superintendent, testified. "I saw none of the men assaulted. They were trying to prevail upon the men from entering the plant (Ab. 31). I got to the plant about 6:30 A. M., go in and out at noon and stayed there until the plant

closed down for the night; saw no assaults committed; I saw no disturbance" (Ab. 31).

Floyd, the Chief Employment Agent, who was stationed at the main gate, testified: "I am at this gate from 7 A. M. until 8, 9 or 10 P. M. I didn't see any of the particular attacks that are mentioned. All I saw was the pickets talking to the men and the men being stopped" (Ab. 43).

Hoffman, Assistant Foreman, testified: "I have seen pickets about the Wabash depot, 150 yards from the plant (Ab. 45). The nearest I saw the pickets was 100 feet from the plant (Ab. 45). I saw no assaults. All I saw them do was to talk to the men" (Ab. 45).

Because Alderman Burton passed by the Mill every morning and evening to and from his work at the Laclede plant in Madison he was made a defendant in this case. He absolved himself, however, at the hearing. He testified that he "was not a member of any labor union. Passed by every morning and evening. I saw no disturbance there whatever and I passed there every day for three weeks" (Ab. 71).

We submit that if these five men are to be believed then there was peaceable picketing. It is not often we admit that one side can establish a proposition by simply quoting the testimony of adverse witnesses but we have done so in this case.

We do not believe that the statement charging the defendants with an intention of burning, or destroying the Mill, should have been made, in any event not without some evidence to substantiate such charge.

Walcher, the Superintendent, did say that "I was told that the statement had been made that the plant was going to be burnt" (Ab. 32). But when he was asked who told him or from whom he heard it, he could not say. This was nothing more nor less than "hearsay evidence" and should not have been given any credence by the trial Court. And why Mr. Davis, the President of the Steel Foundries, should say what he did to the President of the Central Trades Council, at the Commercial Club conference, we fail to understand. After Galloway had stated, "I said to Mr. Davis, some of the men they had imported in there as strike-breakers had shot at some of our men" (Ab. 56), Mr. Davis replied, "the only trouble with the man who done the shooting was that he didn't shoot straight enough" (Ab. 56). While Mr. Davis was present in Court when this statement was made, he did not go on the stand to make denial. Still it is not a pleasant matter to refer to, for up to the present controversy those connected with the Central Trades Council had had a high regard for Mr. Davis, and had not the charge been made that those connected with the Trades Council and other defendants contemplated burning down the Mill (Steel Mill) it would not have been alluded to.

Why counsel for Petitioner would contend that a Federal Court should follow the holding of a State Court is beyond our comprehension. They had their choice of forums. Had the bill been filed in the City Court of Granite City a defense could have been made at nominal expense. Or they could have filed the bill in the Circuit Court of Madison County and defendants

would have to go 15 miles only, to Edwardsville, the County Seat. But they chose to file in the U. S. District Court at Springfield, thus necessitating that defendants go 100 miles. If the American Steel Foundries wished to invoke the Criminal Code of the State of Illinois (Petition P. 25), with reference to a conspiracy the State Courts were open. The "Barnes case" (232 Ill. 425), cited on page 26, tends to uphold the view that wage earners have not the right to combine to compel an employer to pay a certain scale of wages and would indicate that wage earners have not the right to do peaceable picketing. But such holding was by a divided Court and we submit that the dissenting opinion (P. 411), written by Justice Farmer, concurred in by Justice Scott, is more in accordance with justice and the spirit of the times. However, as the said U. S. Court of Appeals had already passed on the two questions involved in the Allis-Chalmers case, 166 Fed. 45, there was nothing for the Court to do but follow its own ruling.

IV.

Duplication of III.

V.

We cannot understand why the statement should be made that "The Circuit Court of Appeals erroneously based its decision upon the authority of Iron Molders' Union v. Allis-Chalmers Company, 166 Fed. Rep. 45.

If there is any one person who should fully comprehend the meaning of a decision it should be the Judge, or Judges, who

comprise such Court. And the allegation that such Court "misapprehended the purport and applicability of the opinion in that case" is tantamount to saying that the Court did not give the matter careful consideration. And yet not only were written briefs filed, but the case was twice orally argued. Furthermore a petition for a rehearing was filed. Hence the statement that the decision was "erroneously based" is without merit.

VI.

The allegation that "this case arose from a conspiracy of strangers to the petitioner and its employees to injure and interfere with its business" is erroneous.

Under heading IV, on page 54, we find that the Tri-City Central Trades Council is alluded to as "a meddler." And on page 55 referred to as "an interloper." That "it was indulging in a gratuitous interference between the petitioner and its employees. In view of the evidence addueed we fail to see why such a statement should be made. The Record shows that the Tri-City Central Trades Council is composed of 37 local organizations, each of which has a representation of six members. The purpose of which organization is to "settle all disputes between employer and employee in relation to wages, etc., by arbitration instead of strike" (Ab. 54). "If we cannot settle by arbitration then we strike" (Ab. 57).

Galloway, the President, testified: "As President of the Central Trades I first learned of a controversy between wage earners and the Foundries from the various delegates of the

various trades who were refused any wages at that plant and made complaint to the Central Body that their wages were reduced from two to nine cents on the hour" (Ab. 54).

"After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its cooperation" (Ab. 55).

Cavanagh, Secretary of the Central Trades, testified: "At the regular meeting on April 15th a communication was received from the Machinists Union requesting that a special meeting be called of all the trades working at the American Steel Foundries to arrange some plan to have the wages restored that were in force when the plant shut down and the meeting was called for Sunday, April 19th. Ten or eleven trades were represented" (Ab. 72).

The Superintendent of the Mill, Walcher, testified that "Eighty or ninety per cent of the employees were old men. I presume these men were members of the various organizations" (Ab. 51).

With this undisputed testimony appearing in the Record we are at a loss to understand why Counsel for Petitioner would say that the Tri-City Central Trades Council is "a meddler" or "an interloper," for it was only performing the function for which it was created.

In the case of Mitchell v. Hitchman Coal Co., 214 Fed. 685-93 (decided 1914, U. S. Court of Appeals, Fourth Circuit), a

coal mine had closed down in June and suspended operations 50 days, and resumed operation upon a new mine basis employing only non-union men. The claim was made in that case that the strikers were not employees and that the Miners' Union of America was a meddler. And while the District Court ruled against the Miners' Union, on appeal the the trial Court was reversed.

In addition to the statement of Walcher that approximately 80 or 90 per cent of the employees were represented in the Trades Council (Ab. 51), Cook testified that he quit because of the reduction of wages (Ab. 70). "I didn't know what wages I was going to get when the plant started up; found it out in three weeks" (Ab. 70).

Churchill, a member of the Machinists' Union, testified that he quit because of the reduction of wages (Ab. 65). Lamb testified that when the strike came on four or five of the members were working at the plant (Ab. 60).

To warrant this Court in granting Certiorari there should be a showing made of **importance and gravity.** Instead, however, of making such showing it would appear instead that the application is made for delay. To find Court decisions appertaining to this heading cited by Petitioner it is necessary that a search be made through such petition.

The first case cited is the Keegan case, 150 Fed. 148 (P. 32) and a distinction is sought to be made because in that case it appears the strikers were in the employ of the defendant while in the case at bar the strikers were represented by the Tri-City

Central Trades Council. Likewise in the Everett case, 150 Va. 188, and the same point is made in Jones v. Maher, 166 N. Y. Supp. 180, where the men struck because the foreman was discharged (P. 34).

The Gray case, 91 Minn. 171, is on page 34 referred to, alleging that it was a controversy between employee and employer. And again on page 34 the Heffron case, 139 Mo. 639, and the Jones case, 131 Ga. 356, are cited for like reason. But we fail to see that these cases form any basis why a writ of Certiorari should be granted.

On Page 35 Counsel makes the broad statement to the effect "Iron Molders' Union v. Allis Chalmers Company supra not being authority nor justification for the decision of the Circuit Court of Appeals, that the "Barnes decision" of the Illinois State Supreme Court "should have been followed." Strange indeed to expect that a United States Circuit Court of Appeals should disregard its own holding and follow a State Court decision. And this, too, when the State Court was divided on the proposition of law involved (Barnes case, 232 Ill. 425). Furthermore, the State Court, in a later case, Kemp v. Division No. 241, 255 Ill. 213, held that it was **not a conspiracy** because men formed a union and agreed not to work with non-union men. "That the purpose of organizing labor unions was to gain strength and that the officials of the labor unions were merely the agent of those affected" (P. 220).

The United States Supreme Court holding (107 U. S. 21), cited on page 35 has no reference to lawful or unlawful com-

bination of labor, nor of peaceable picketing. The Court in that case does say, "that ordinarily the United States Court will follow a State Court holding as to **real estate** and the construction of **State Constitutions** or **Statutes.**" But there is no question of real estate title involved; nor is the construction, which is to be placed upon a statute, or any particular section of the State Constitution, at issue. **Not once** has any reference been made to any State statute, or section of the State Constitution, until the filing of this petition (page 35). As we have heretofore said, "Had Petitioner desired the application of the State law to the issues involved, they should have filed their bill for injunction in the State Court. They chose, however, to submit to the Federal Court and should not now complain.

On Page 51 we find the Gee case, 139 Fed. 582, cited, wherein a trial judge held that there was no such thing as peaceable picketing. But why cite such case and seek thus to overrule the U. S. Court of Appeals. The District Judge so held in the case at bar and the U. S. Court of Appeals has held otherwise. We find on page 52 the Beck case, 77 N. W. 13, and that portion quoted wherein the Court said: "It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion." We do not, of course, know what the evidence showed in that case, but in the case at bar the evidence was conclusive that only peaceable picketing was authorized.

Why Counsel should cite the Gompers case, 221 U. S. 221, we cannot understand, for the reason the right to do peaceable picketing, or the right of wage earners to combine, and by law-

ful means to try and compel an employer to advance wages or submit the wage dispute to arbitration were not involved.

We hardly think the Court will consider the Jones case, 131 Ga. 336, cited on page 53, of sufficient moment to even give it much consideration.

The Sailors' Union case, 156 Fed. 450, cited on page 53, is not in point, and if it was it is only the opinion of a trial Judge. Whereas the U. S. Circuit Court of Appeals of the Seventh Circuit has twice gone on record as saying that wage earners may combine, and to enforce such combination may resort to peaceful picketing. Nor have we been referred to a U. S. Court of Appeals that has held to the contrary.

Whether it was upon this point Counsel cited the McKenna case, 30 Fed. Rep. 48 (See page 56 of Petition), we do not know, but the facts were not as they are in this case. The opinion says: "The defendants not being in Plaintiff's employ, and without any legal justification." In the case at bar there was justification, legal as well as otherwise, and the wage earners employed in such mill were represented by the Central Trades Council.

In the case of Hagerty, 116 Fed. 510, the complaint was based on the ground that the defendants were trespassing on the premises, the lands, of the Coal Company. In the case at bar not even one witness testified that there was trespassing.

On page 63 Counsel has cited the Cinti. Typo. Union case, 45 Fed. 135, wherein the question of boycotting a newspaper is

involved. While the controversy arose over unionizing the printers we fail to see any reference made to the right of wage earners to combine as they did in the case at bar under the head of the Central Trades Council. Nor does it appear the right of peaceful picketing was involved.

It would hardly be possible that this Court will pay much, if any, attention, to what a Judge in Connecticut said, but nevertheless the Glidden case, 8 Atl. Rep. 890 (decided in 1887), is, on page 64, referred to.

In that case it would seem a demand was made that the employes be discharged and others hired in their places, and the Court said this was wrongful dictation. But in the case at bar it was simply a question of wages. The Tri-City Central Trades Council did not demand that any employee be discharged.

On page 69 Counsel has cited the Frank case, 63 A. J. Eq. 443. In that case the Court held that "the right of a master to have a servant continue in his employ without molestation or enticement by any third party **is a property right.**"

Suffice to say in this connection that no employer has such thing as a property right in his employee. The Master had a property right in **his slave** prior to the issuing, by Lincoln, of the Emancipation Proclamaton, we concede. But at no time has the American wage earner conceded any such right to an employer.

This doctrine of Master and Servant is of antediluvian English origin and, as has been said in a recent case "The

Ancient English rule that labor unions were unlawful does not prevail in the United States in view of the changed conditions existing, the rule being now settled that labor may organize for its own protection and to further the interest of the laboring classes, and may strike and persuade and induce others to join them by peaceable means."

Mitchell v. Hitchman Coal Co. 214 Fed. 685 (Decided 1914). (Fourth Circuit.)

In the Kane case, 23 Fed. 748, it was held "that employees of a Receiver might abandon their employment and persuade others to do so, by peaceable and lawful means." And that is all the wage earners are contending for in the case at bar.

Why the Mayor of Granite City is referred to, on page 11, as being a member of the Socialist party can be but for one reason, to prejudice, if possible, the cause of the wage earners before the Honorable Court.

We have not understood Socialists to be law breakers. We heard "A Socialist" defined by the greatest living American, probably, as being "one who is endeavoring to improve conditions." Hence, if Kirkpatrick is doing that, instead of being a criminal he is a benefactor. Probably his sympathies were with the wage earners in their controversy with the Steel Foundries people, but that would not deter him from fulfilling his oath of office and to see that life and property were protected. When asked, with reference thereto, he testified: "I am ready to give police protection and did give it" (Ab. 58). "As Mayor of the city, I consider I have plenty of police to protect the

property; I have done that all along and would have done it without this injunction and am ready and willing to do it now" (Ab. 59).

Sheriff Henry testified: "I had two deputies down there and told them to investigate and they reported there was not much doing. If it was necessary we would have provided deputies" (Ab. 62). While a careful perusal of the evidence will show that in every instance where there was any assault or a mix-up of any kind between strike-breakers and others, it was a disputed question as to who was the aggressor. Be that as it may, we have not sought to make any defense of lawlessness. Those connected with the Tri-City Central Trades Council **did not authorize or countenance lawless acts.** and the Defendants testified positively that no unlawful act was committed by them, or either of them.

As to the statement made on page 11 to the effect that Galloway, the President of the Central Trades Council, was present when a riot took place, is erroneous. This mix-up took place on the 13th and at some distance from the plant. When Galloway was asked, with reference thereto, he said. "I was not at the plant or on the picket line on May the 13th. I worked until five o'clock in Madison, an adjoining town; got back to Granite City about 5:30 and then I was in Boyd's Garage until 6 o'clock. I did not strike any of the strike-breakers or other employees, leaving the plant, nor did I strike nor assault these parties on any other day other than the 13th" (Ab. 56).

The Debs case, 158 U. S. 564, has been quoted. The opinion in this case was predicated upon the theory that there was a boycott against interstate traffic and the handling of mails. In that case Justice Brewer, on page 577, said: "Employees may not be restrained from using persuasion and other peaceable methods, or from aiding strikers by furnishing money from a relief fund." All the wage earners desire in the case at bar is the right to combine and the right to do peaceable picketing.

The statement made on page 12 to the effect that, "after the restraining order was issued the plant was operated without interference," is probably true. After the Central Trades Council was held to be an "unlawful combination" (Ab. 78) and the District Judge had declared that "there is no such thing as peaceable picketing" (Ab. 80), the hundreds of wage earners represented by such Trades Council were shorn of every weapon. They accepted such decision of such trial Judge as the law and as good law abiding American citizens observed it. No doubt had the decision of such District Judge been adverse to such Steel Foundries, they would have disregarded the same "until such time as the Supreme Court might pass on the constitutionality of the question involved."

The Statute with reference to Conspiracy cited on page 25 has reference to where "persons conspire * * * with fraudulent or malicious intent, wrongfully and wickedly to injure the business or property of another * * *."

There is no evidence in the record that the officers of the Tri-City Central Trades Council, or other defendants, intended to perpetrate a fraud or by malicious intent wrongfully to destroy the business or property of Complainant.

In the case of People v. Young, 188 Ill. App. 208 (decided 1914), certain wage earners, members of the Carpenters' Union had, under this Statute, been indicted, because of a strike and alleged interference with others, and Counsel for the prosecution cited the Franklin Union case, 220 Ill. 355, but the Court of Appeals refused to follow such holding and on page 212 cited the Kemp case, 255 Ill. 213. On page 212 the Court said: "Union men or other employees have the right to seek by peaceable persuasion to induce others to leave or refrain from working for their employer."

While it would seem that the State Court did in the Franklin Union case, 220 Ill. 378 (decided 1906), hold against the right of organized labor to picket, such decision, it would appear was predicated on the theory that "Labor is property," and to interfere between employer and employee was to deprive a person of his property without due process of law (P. 378).

And in the Barnes case, 232 Ill. 424 (decided 1908). The Typographical Union made a demand for an eight-hour day and such union was held to be an unlawful combination (P. 432). But to this holding Justice Farmer dissented (P. 437) and the opinion written by him and concurred in by Justice Scott is more in accord with modern views with reference to

the rights of wage earners. When the question of the rights of labor unions to combine came for the third time before the State Supreme Court, Kemp v. Division No. 241, 255 Ill. 212 (decided 1912), the Court was not inclined to take such a drastic view of labor organizations; and on page 220 said: "Labor Unions have long since been recognized by the Courts of this Country as a legitimate part of the industrial system of the nation. The ultimate purpose of such organization is, through combination, to advance the interests of the members by obtaining for them adequate compensation for their labor and it has been frequently stated by the American Courts that the fact that this purpose is sought to be obtained through combination, or concerted action of employees does not render the means unlawful. The purpose of organizing labor unions is to enable those employees who became members to negotiate matters arising between them and their employers through the intermediation of Officers and Committeemen of the Union and to accomplish their ends through concerted action" (P. 221).

"The demand that Appellees be discharged, and the threat that unless the Railway Company complied with the demand of the Union would call a strike of the employees of the Railway Company, in effect meant no more than the mere statement that the Union employes would no longer work with non-union employees, and if the Railroad Company chose to retain in its employ the non-union men the union employees would quit the service of the Company" (P. 222). "It has been comparatively

but a short time since it was unlawful for workmen to associate themselves together into such organizations as are now known as Trades Unions for the purpose of improving conditions of labor. Such organization was formerly held to be a criminal conspiracy" * * * (P. 224). "An agreement by a combination * * * to advance the interests of the Union and not having for its primary object the purpose of injuring others in their business or employment is lawful" (P. 224). "As to whether or not the object which this bill discloses was sought to be attained by the members of the Union was a lawful one * * * the authorities are clearly in conflict. * * *

"The precise question has never been passed upon in this State * * *. We are not inclined to follow the cases cited by Appellee (Street Car Company); we are of the opinion that the cases holding the contrary view (cited by the Street Ry. Employees' Union) are supported by the better reasoning" (P. 225).

"Without organization the Workmen would be utterly unable to make a successful effort to maintain or increase their wages or to enforce such demands as have been held proper" (P. 226).

"Appellees rely upon the Franklin Union case, 220 Ill. 355, and the Barnes case, 232 Ill., 424." In these cases the employees had gone out on strike and injunctions had been secured. * * * The injunctions had been violated. * * * While the matters involved in each case grew out of acts following a strike of

union employees, the question of the right to strike was not involved (P. 232). The case at bar partakes of none of the elements of a boycott. The primary object of a boycott being to inflict injury upon another has been held to be illegal. Here the primary object of the combination is to further the interests of the organization and improve the condition of its members. Whatever injury may follow to others is merely incidental" (P. 234-5). And is that not what the Tri-City Central Trades Council contemplated? The latest ruling of the State Supreme Court would indicate, therefore, that such Court does not hold it unlawful for wage earners to combine.

It has been said that any employer of labor, be he ever so well meaning, stands in the way of future progress if he insists upon dealing with his workmen "as individuals." Should such policy succeed, it would no doubt mean the degradation and impoverishment of the working classes. If organized, the wage earners may bargain collectively; this means concerted action and the right of wage earners to be represented. It is apparent that one not in the immediate employ of a person is in a better position to represent the employees. Such representative feels more independent for the reason he is not subject to dismissal. For an employer to insist upon treating with his employees "as individuals" would mean that each one of the thousands in a plant would have the "individual contract" and that would mean long hours, small pay, the sweat shop, etc;

while "collective bargaining" would mean improved conditions, better workmanship and more exalted citizenship.

We submit that it may not always be possible for the employer and employees to agree, but when, as in the case at bar, the cardinal principle of the Tri-City Central Trades Council sets forth specifically "To settle all disputes between employer and employees in relation to wages, etc., by arbitration instead of strike" (Ab. 54). And, in this case had the Petitioner agreed to arbitration there would have been no strike; there would have been no conflict between strike-breakers and others, and there would have been no cause for the ill feeling that was later engendered. And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.

It is not uncommon for the employer to say that "peaceable picketing will interfere with my business." To not permit "peaceable picketing" the wage earner might retaliate by saying to the employer: "You are interfering with my right to live and enjoy the comforts of life."

Subsequent to the Civil War the wage earners of America have made marvelous strides. Wages have been increased, the work day shortened, the things he can buy, political privileges, legal rights, in skill, intelligence and the standing he has attained, the esteem in which he is held and the humane treatment which to him is accorded. But to obtain these, great sacrifices have been made by the pioneers of organ-

ized labor. Every advance of the wage earner has been through concerted action. Men interested in their fellow men have gone about the work of organization, devoting their time, without remuneration, to the cause. They dared to do this even when cognizant of the fact that they might be placed on the "black list," and not only they, but their loved ones as well be made to suffer for the necessaries of life. They made this sacrifice so that the conditions of the wage earners of America might be improved. **Not by means of violence,** for the one who would destroy life or property, or violate the law of the land, is a hindrance to the cause, but by insisting upon the right to organize, combine, and to enforce such combination by peaceable picketing, or other lawful means.

While Counsel for Petitioner has cited a number of Federal Court decisions they are all the opinion of a **District Judge** except two, viz: The Sailors' Union case, 156 Fed. 450 (Ninth Circuit), and the Allis Chalmers case, 166 Fed. 45 (Seventh Circuit). In the former it would appear that when a vessel was about to depart from a point on the California coast, employees were pinioned and imprisoned to keep them from going on the vessel. The Court, on page 453, said: "The purpose of the injunction was to prevent acts of lawlessness." Nothing of the kind occurred in the case at bar. The trial judge held it to be unlawful for the workingmen to combine (Ab. 78). And he held furthermore that there was no such thing as peaceful picketing (Ab. 80).

In the other case (Allis-Chalmers), the U. S. Circuit Court of Appeals held that workingmen did have the right to combine and did have the right to do peaceable picketing. Wherever these questions have arisen in other Circuits the holding of the U. S. Circuit Court of Appeals has been in conformity with the holding made by the Seventh Circuit in the Allis-Chalmers case.

Petitioner has not shown that the Supreme Court has decided the questions involved contrary to the ruling of the U. S. Circuit Court of Appeals. True, two Supreme Court decisions are cited: One the Burgess Case, 107 U. S. 20 (decided in 1882), but it does not allude to a combination of wage earners; nor of the right to do peaceable picketing. It appears that that case was cited: "because the U. S. Circuit Court of Appeals did not follow the holding of the State Supreme Court." And yet we have shown that the State Supreme Court itself in a later case (255 Ill. 213) would not follow the holding therein made. On Page 33 the U. S. Supreme Court said: "We do not consider ourselves bound to follow the decision of the State Court in this case. The Federal Courts have an independent jurisdiction in the administration of State laws, co-ordinate with, and not subordinate to that of the State Courts and are bound to exercise through our judgment as to the meaning and effect of these laws" (P. 33).

The other Supreme Court holding cited is the Gompers' case, 221 U. S. 418. That was a suit instituted originally under the Sherman Anti-Trust law, and the question involved was, as to

whether or not the defendants were guilty of a contempt of Court (P. 441). While the District Judge had adjudged Gompers et al guilty, the Supreme Court reversed such ruling (P. 452).

Hence, without even one decision of a U. S. Court of Appeals, or one holding of the U. S. Supreme Court, to sustain the contention of Complainant, to the effect **that working men have not the right to combine,** and have not the right to do **peaceable picketing,** the petitioner is not in position to seriously ask this Court to award Certiorari.

We have referred to every case cited by Counsel in support of their Application for Certiorari, scattered as they are throughout the petition, and regardless of any particular heading. Still we did it to ascertain, if possible, on what theory the attempt was being made to have this Court award Certiorari, but without avail, for, in our judgment, no showing has been made to warrant the Court in granting such Application.

We therefore respectfully submit that the Application for a Writ of Certiorari should be denied.

FRANK C. SMITH,
Attorney for Respondents.

In the Supreme Court of the United States.

AMERICAN STEEL FOUNDERS,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, ET AL.,
Respondents.

REPLY OF PETITIONER TO BRIEF OF RESPONDENTS.

I.

Except for repeated claims in the brief of respondents, without support or foundation in the record, that the respondent Tri-City Central Trades Council represented the employees of petitioner, there would seem to be an entire want of appreciation by the respondents of the petitioner's contentions.

In respondents' statement of the case at page 2, there appears the following: "At their (men in the employ of petitioner) request a committee was appointed to confer with the management. Ab. 54." There is not at page 54 nor on any other page in the record any evidence to justify this statement. Indeed, the record is barren in this regard.

At page 13 of respondents' brief we find the following with reference to a statement in one of the authorities cited, to the

effect that employees had the right to select a committee to request a conference, etc.: "And that is just what the employees of the Mill Company did in this case, delegate such duty to the Tri-City Central Trades Council." The Court will look in vain for anything in the record to sustain that statement.

At page 23 of respondents' brief we find: "While in the case at bar the strikers were represented by the Tri-City Central Trades Council"; and at page 26 the following: "And the wage-earners employed in such mill were represented by the Central Trades Council." We say with confidence the record not only fails to support these statements, but on the contrary expressly refutes and disproves them.

Walcher, the works manager of the petitioner, on cross-examination by counsel for respondents, testified (Rec. 51 and 52), as follows:

> "Earl Galloway was admitted to my office and told me there was a committee that represented the labor organization; *I asked him if the committee represented our employees and he said they did not*, and I told him we didn't recognize any labor organizations."

Galloway did not deny or contradict the testimony of Walcher to the effect that the committee of which he, Galloway, was chairman did not represent the employees of petitioner. When he was interrogated on this point he testified (Rec., 55):

> "As chairman I went to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; he asked me who the committee was; if it was any of his employees; I told him not at the present time; that there had been but they were representatives of the different local unions."

In the cases cited by respondents the Court will find wherever a labor organization acted in behalf of employees authority therefor was first expressly given by such employees.

II.

To overcome the petitioner's contention that the Illinois rule, as expressed in Barnes v. Typographical Union, 232 Ill., 425, should obtain and be followed in the case at bar, respondents cite Kemp v. Division No. 241 Assn., 255 Ill., 213. A reading of the majority opinions in that case will demonstrate that the case did not nor was it intended to overrule Barnes v. Typographical Union, *supra ;* also that it does not bear upon the questions involved here. The purpose of the bill in that case as stated by the Court there, was as follows :

> " The only reasonable conclusion to be deduced from the allegations and prayer of the bill is that appellees by this proceeding seek to restrain the union and its officers from calling a strike of its members, the obvious purpose of the injunction sought being to prevent the union employees of the Railways Company from quitting their employment *in accordance with the vote previously taken, by which those employees as members of the union declared that they would cease to work with men* who, after receiving benefits through their organization refused to continue members. * * * The question presented for our determination, therefore, is whether a court of equity is authorized upon application by the non-union employees to restrain the union and its officers from calling a strike of the union employees *in accordance with the vote previously taken by the union employees as members of the union*, where the purpose of the proposed strike is to compel the employer to discharge non-union employees who are engaged in the same class of work." (Italics ours.)

The Court will note that the question of whether or not there should be a strike was submitted to and voted upon by the employees of the Railways Company, and that representations or action of the organization in dealing with the Railways Company was upon the express authority conferred by the vote of the employees.

The case at bar presents no such situation. The Tri-City Central Trades Council arrogated to itself the prerogative and privilege to demand from petitioner a change in wages, without authority or request of the employees.

The Court in Kemp v. Division No. 241 Assn., *supra*, further says:

> "The purpose of organizing labor unions is to enable those employees who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union, and to accomplish their ends through concerted action. *If duly authorized by the employees to adjust any controversy arising between them and their employers, the union, its officers and committees, are merely acting as agents of the employees in the matter.* If the union employees have the legal right to inform their employers of their refusal to work with the appellees, they had the legal right to convey that information to the employer through an agent or agents, and the agent or agents who so act would not commit an actionable wrong thereby, nor by reporting back to the union employees the result of the conference with the employer." (Italics ours.)

No case is cited by respondents to sustain the conduct of respondents, without the request of the employees of petitioner and admittedly not representing them, through a self appointed committee demanding from the petitioner a change in the wages, which at the time as shown by the record were satisfactory to both the petitioner and its employees.

The undisputed evidence is that the Tri-City Central

Trades Council and not the employees of petitioner declared a strike against the petitioner. That the employees made no complaint of their wages or working conditions. That the relations between the petitioner and its employees were in perfect amity and accord. That the Tri-City Trades Council demanded from petitioner a change in the scale of wages, and upon refusal to deal with its committee, declared a strike against the petitioner. There is no evidence in the record to justify the argument or contention that any employees of the petitioner made complaint to either the Tri-City Trades Council or to any union affiliated therewith. The evidence, so far as the record discloses, is to the contrary.

The employees of the petitioner did not strike nor cause any strike. A circular appearing on page 30 of the record states who called the strike ; it reads as follows :

> "UNION MEN AND ALL LABOR STAY AWAY FROM THE AMERICAN STEEL FOUNDRY, GRANITE CITY, ILL. ; ALL TRADES ARE ON STRIKE
>
> For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was re-resumed recently.
>
> By Order of Ways and Means
> COMMITTEE OF TRI-CITY CENTRAL TRADES COUNCIL,
> Endorsed by Tri-City Trades Council."

Even the two men who quit the employ of petitioner as a result of the strike called by the Tri-City Trades Council had no relation to or connection with the strike, and as disclosed by the record, knew nothing of it until after the strike had been launched. Each testified that he quit work because a strike was on.

In that connection note the facts in Kemp v. Division No. 21 Assn., *supra*, cited by respondents :

> "The threat made by the committee that the members of the union would call a strike of the em-

ployees of the Railways Company unless their demands were complied with, meant no more than that the union employees would be notified to quit work in a body at a definite time if the non-union employees were retained in the service. *This action of the committee, if not then authorized, was ratified by an almost unanimous vote of the union employees. The union employees thereby authorized and instructed the union, its officers and members, to call the strike which it is sought by this proceeding to prevent. The contemplated action of the union employees is not the result of the dictation of any officer or officers of the union or of any person not interested in the employment, but is the voluntary action of the union employees of the Railways Company.*" (Italics ours.)

In the case at bar the very reverse state of affairs existed. The employees did not authorize the Tri-City Trades Council or its self-appointed committee to act for them, and did not ratify their action, but on the contrary were ignorant of the Trades Council's activities, and with the exception of two men, Churchill and Cook, refused to leave the employee of the petitioner, and in consequence were subjected to indignities, intimidation, terrorism and assault.

This is not a case where employees had a difference with the employer and by their own act and authority sought relief or compliance with demands by inaugurating and conducting a strike against the employer, as was the case in Iron Moulders Union v. Allis-Chalmers Co., 166 Fed. Rep., 45, upon which the Circuit Court of Appeals based its opinion.

See Wabash R. Co. v. Hannahan, 121 Fed. Rep., 562, cited by respondents. We call the Court's attention to that part of the opinion appearing on page 569 as follows:

"In the summer of 1902 the Western Association of General Committees, etc., was organized at Kansas City, Mo., for the avowed purpose of securing an advance of 20% in wages of trainmen, and other employees of roads west, northwest and southwest of Chicago. *The trainmen of the Wabash did not at first*

*join this association, but later through their general committee, notified the president of the company that they had become identified with that movement and would expect an increase of wages accordingly. The firemen also at about the same time through their committee notified the president of the company of their desire for a new scale of wages and rules. * * * Repeated conferences and much correspondence ensued, until finally the president of the company questioned the authority of the committees to act for any employees. Thereupon a written authority was secured from a large number of such employees, authorizing the committees to represent them.*" (Italics ours.)

Respondents also cite Kolley v. Robinson, 187 Fed. Rep., 415. We direct the Court's attention to the opinion, at page 417, as follows:

> "We have examined this record with care, and think the allegations of the bill are fully sustained by the evidence. The authorities are all in harmony *that union or other laborers have the right to quit the service of an employer when they choose to do so*, and that they may by peaceful methods persuade others to quit the service of an employer." (Italics ours.)

There was there no question of activity and strike by others than employees themselves. The injunction in that case was upheld.

Respondents also cite Mitchell v. Hitchman Coal & Coke Co., 214 Fed. Rep., 686. The Court will find in the opinion at page 690, that the purpose of the injunction was to restrain a labor organization (United Mine Workers of America) from seeking membership amongst the employees of the Coal Company. The questions presented in the case at bar were in no way involved in that case, and the principal point decided was that the labor organization was not in itself unlawful and should not be enjoined from peaceably seeking to augment its membership from amongst the employees of the Coal Company.

III.

Respondents admit that but for the injunction granted in this case, the strike inaugurated by the Tri-City Central Trades Council would have been successful, and that petitioner would have had to close down its plant unless it granted the demand made by the Tri-City Trades Council, a stranger to both the petitioner and its employees and a gratuitous meddler in their affairs. On page 35 of respondents' brief the Court will note the following :

> "And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill, even at such a reduced force as it is."

One of the cases cited by respondents in their brief is Arthur v. Oakes, 63 Fed. Rep., 310. The opinion is by Justice HARLAN, sitting as Circuit Judge, and on page 324 we find expression fully confirming the contentions of petitioner that the acts and conduct of the respondents constitute an illegal conspiracy and should be enjoined. The Court says :

> "It seems entirely clear upon authority that any combination or conspiracy upon the part of these employees would be illegal which has for its object to cripple the property in the hands of the Receivers and to embarrass the operation of the railroads under their management, either by disabling or rendering unfit for use engines, cars or other property in their hands or by interfering with their possession, or by actually obstructing their control and management of the property, or by using force, intimidation, threats or other wrongful methods against the Receivers or their agents or against the employees remaining in their service, or by using like methods to cause employees to quit or to prevent or deter others from

entering the service in place of those leaving it. Combinations of that character disturb the peace of society and are mischievous in the extreme. They imperil the interests of the public, which may rightfully demand that the free course of trade shall not be unreasonably obstructed. They endanger the personal security and the personal liberty of individuals who in the exercise of their inalienable privilege of choosing the terms upon which they shall labor, enter or attempt to enter the service of those against whom such combinations are specially aimed."

IV.

As stated in the petition for writ of *certiorari* and the brief in support thereof, petitioner has not sought and does not claim any right to interfere with or limit the right of any laborer or any employee to quit its employ; or to become a member of any labor organization; or singly or collectively to make demands for changes in wages or working conditions; or by joint action with others of its employees to call a strike as a means for securing a change in wages or working conditions; but petitioner does contend and does insist that the Tri-City Central Trades Council had no right, on its own initiative, to make demands upon the petitioner for a change in wages and upon petitioner's refusal to deal with its committee to call a strike against the petitioner, force the employees of the petitioner who were satisfied with their wages and working conditions and had not made no complaint, to quit their work, leave petitioner's employ, break their contracts of employment, and compel petitioner to close down its plant, to the great injury of its business and property.

The Tri-City Trades Council did not represent petitioner's employees, and the chairman of its committee, Galloway, so

testified on the trial. The Tri-City Trades Council was a mere meddler, an interloper and a trespasser, and every act committed by it or its agents or its pickets was illegal, and the manner of such act or conduct and the nature of the "picketing" and the "persuasion," we insist, were entirely immaterial.

V.

In further support of our contention that the Illinois rule should obtain, we direct the Court's attention to the very recent case of Phillip Henrici Co. v. Alexander, 198 Ill. App., 568 (cited below), dealing with practically the same situation as in the case at bar. There was no strike by the employees in that case, but an effort was made by labor organizations on their own initiative for the purpose of bringing about a change in conditions throughout Chicago, to force the employees of the Henrici Company to quit and strike. The court below qualified the injunction against picketing by adding "in such manner as to intimidate, threaten or coerce any person or persons from entering or who may desire to enter said premises for the purpose of patronizing the complainant or for any lawful purpose whatsoever."

The Appellate Court in that case, upon the authority of Barnes v. Typographical Union, *supra*, directed the qualification above quoted be stricken out and that the injunction against picketing be unlimited.

Respondents claim that Kemp v. Division No. 241 Assn. overruled Barnes v. Typographical Union and other cases. This we dispute.

Nevertheless, we call attention to the following language of Justice CARTER in Kemp v. Division No. 241 Assn., *supra*:

> "The United States Supreme Court has not decided the question now before us, but the reasoning of the

federal courts of intermediate and appellate jurisdiction in the cases heretofore cited tends strongly to support the contentions of appellants. See, for a review of the authorities and principles involved, Iron Moulders Union v. Allis-Chalmers Co., 166 Fed., 45."

The Circuit Court of Appeals in the case at bar misinterpreted and misapprehended Iron Molders Union v. Allis-Chalmers Co., *supra*. It does not support or sustain the opinion filed.

The questions presented are serious and important and have not been decided by this Honorable Court; we respectfully ask for a hearing thereon.

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HARRY B. HUBD,
WILLIAM E. WHEELER,
Solicitors for Petitioner.

MAX PAM,
Of Counsel.

Office Supreme Court, U.S.
FILED
OCT 3 1921
JAMES D. MAHER

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1921.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL et al.,
Respondents.

REVISED BRIEF OF RESPONDENTS.

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To the Honorable Supreme Court:

Inasmuch as this is the third time that this cause has been set down for oral argument, and a change having been made in the personnel of the Court since the second argument, we have considered it expedient that a revised brief be filed. Not because of anything new, as far as Court rulings are concerned, but to enable the Court to more readily grasp the issues involved.

STATEMENT.

The American Steel Foundries, a New Jersey corporation, authorized to do business in Illinois, had a large steel plant in Granite City, Illinois. In November, 1913, it closed down, and at that tme had approximately 1,600 working men in its employ (Abs., p. 24). These represented the various crafts. The Tri-City Central Trades Council was—and is—an organization representing the working men of Granite City, Madison and Venice, the meetings of which are open (Abs., pp. 43-58). Thirty-seven locals, representing the various crafts, comprise the Tri-City Central Trades Council, each local having six representatives. This Central Trades Council has a constitution and by-laws, a portion of which counsel for appellant saw fit to introduce in evidence (Abs., pp. 43, 60). These excerpts show that the Tri-City Central Trades Council is affiliated with the American Federation of Labor, and its primary purpose to aid any branch of labor that might be oppressed, and that all may form one brotherhood for the defense and protection of the laboring classes (Abs., p. 43). On April 6, 1914, the plant reopened, and while 1,300 was the number "laid off" (Abs., p. 51), it only called for approximately 370 (Abs., p. 23). Welcher, the superintendent, testified that

80 or 90 per cent of these were old men, and he assumed were members of the various organizations (Abs., p. 41). While he did not specifically say organizations connected with the Tri-City Central Trades Council, he certainly must have had these in view, because no others had been mentioned. Wages were reduced from two to nine cents an hour, and as a result complaints were made by those affected to the Central Trades Council, and the Council was requested to take up the matter (Abs., pp. 43, 44, 57, 58). A committee was appointed "to wait upon this corporation to arbitrate the question" (Abs., p. 44). This was on April 20 (Abs., p. 44). When the committee called at the plant and asked for a conference, but one of the number was admitted. To him the superintendent said that the company would not meet with any representative of organized labor; if anybody around the plant felt mistreated or had any grievance, to come in as individuals (Abs., p. 44). To the chairman of the committee the superintendent stated that the company was running an open shop, and refused to deal with one representing a labor union (Abs., p. 25); that we had nothing to arbitrate (Abs., p. 41).

The committee made a report to the Central Trades Council, whereupon a strike order was issued (Abs., p. 44). That was on April 22 (Abs., pp. 41-44). The

Commercial Club of Granite City, feeling that a settlement of the wage controversy was something to be desired, called a conference and at such there were representatives of the Granite City Commercial Club, the Steel Plant and the Central Trades Council (Abs., p. 44). At that meeting the representative of the Steel Plant said, "We have no arbitration offer to make to these laboring men" (Abs., p. 41). The Tri-City Central Trades Council, pursuant to the strike order, appointed pickets; "They were from the different crafts that were connected with the reduction in wages" (Abs., p. 45). On May 18, the Steel Foundries applied for an injunction, alleging that the defendants had combined and conspired to prevent the Steel Foundries from employing skilled laborers—that pickets appointed had committed assaults, etc. (Abs., p. 5). A temporary injunction was granted. On June 4, 1914, the defendants filed an answer (Abs., p. 15). A hearing was had on June 8, 1914. At the conclusion of the hearing the Court rendered an opinion (Abs., p. 63), and a decree making the injunction permanent was approved (Abs., p. 66). From this final decree (Abs., p. 69), an appeal was taken to the United States Circuit Court of Appeals (Abs., p. 73).

On January 26, 1915, the cause came on for hearing in said court and was argued by counsel. On May 23, 1916, the Court directed a reargument. The

reargument took place on June 8, 1916. On December 6, 1916, the United States Circuit Court of Appeals reversed the decree of the District Court, with directions to modify the same (Abs., p. 87). After the Court had, on January 24, 1917, denied a petition for rehearing, the American Steel Foundries did, on March 7, 1917, file a petition in this court for certiorari. This being granted, the case was appealed. On October 8, 1918, the case was argued orally. It was reargued on October 9, 1920. The case has been ordered redocketed and set down for a third argument before a full Court at the October Term, 1921.

The two questions in which the respondents are most vitally interested are: The holding of the District Judge, wherein he declared the Tri-City Central Trades Council to be an unlawful combination (Abs., p. 63). And wherein he said that there is no such thing as peaceful picketing (Abs., p. 63). The decree prepared by counsel for petitioner (Abs., p. 65), containing the views of the trial judge, was reversed by the United States Circuit Court of Appeals (Abs., p. 87).

While this injunction, issued on May 18, 1914, was reversed by the United States Circuit Court of Appeals, no remanding order has been issued and conditions at Granite City remain unchanged.

BRIEF.

I.

For workingmen to organize into unions and to concentrate their unions under one head, known as the Central Trades Council, the object of which is to improve the conditions of the toilers, is not an unlawful combination.

Thomas v. Cinti. etc. R. R., 62 Fed. 805;
Arthur v. Oakes, 63 Fed. 310-21;
Iron Molders' Union 125 v. Allis-Chalmers Co., 166 Fed. 45;
Kemp v. Division etc., 255 Ill. 213-44;
People of the State of Illinois v. Young, 188 Ill. App. 288;
Beaton v. Turant, 102 Ill. App. 128;
Everett v. R. T. Union, 105 Va. 188-94;
Ex parte Heffron et al, Mo. Court of Appeals, 162 S. W. 652;
Ames v. M. P. Ry., 62 Fed. 7-14;
Beck v. Teamsters' Union, 118 Mich. 497-526;
Pettibone v. U. S., 148 U. S. 197;
Kane v. U. S., 23 Fed. 748.
Clayton Act, Sec. 6, enacted by Congress (Oct. 15, 1916) while this case was pending on appeal in U. S. Ct. of Appeals.

II.

To order a strike is not unlawful. Labor unions have this right.

Thomas v. Centi etc. R. R., 62 Fed. 817;
U. S. v. Elliott, 62 Fed. 801;
Wabash R. R. v. Hannahan, 121 Fed. 563;
Kelly v. Robinson, 187 Fed. 415;
Kemp v. Division etc., 225 Ill. 220-24;
Beaton v. Turant, 102 Ill. App. 128;
People v. Young, 188 Ill. App. 288;
Kemp v. Division etc., 255 Ill. 213;
Allis-Chalmers, 166 Fed. 45;
Arthur v. Oakes, 63 Fed. 310-27;
Goldfield Con. Mining Co. v. Miners' Union, 159 Fed. 500;
Kelly v. Robinson, 187 Fed. 415;
Sailors' Union etc. v. Hammond etc., 156 Fed. 453;
Hopkins, v. U. S., 171 U. S. 593-4;
Everett etc. v. R. T. Union, 105 Va. 188-95;
Karges Furn. Co. v. Amalgamated Wood Workers' Union, 165 Ind. 421;
Bohn Mfg. Co. v. Hollis, 54 Minn. 223;
Surrell Mfg. Co. v. Terry, 106 N. Y. Sup. 438;
International etc. v. Cummings, 170 N. Y. 315-21;
Gray v. Building Trades Council, 91 Minn. 172-79.

III.

To picket a plant and for pickets to try and persuade men from taking the places of those who go out in response to a strike order is not unlawful.

Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 45;
Ex parte Heffron et al. (Mo. App. Ct.), St. Louis Dist. 162, S. W. 652;
Beaton v. Tarrant, 102 Ill. App. 129;
People v. Young, Ill. 188, App. 288;
Kargus etc. v. Woodworkers' Union, 165 Ind. 422;
Clothing Co. v. Watson, 168 Mo. 133-50;
American Steel Mine Co. v. Wire Drawers etc., 90 Fed. 608-09;
Gray v. Building Trades Council, 91 Minn. 171;
18 Am. & E. of Law (2nd Ed.) 87;
High on Injunction, Section 1415j;
Levy v. Rosestein, 66 N. Y. (Sup.) 438;
Walter A. Wood etc. v. Toohey, 186 N. Y. S. 95;
Clayton Act, Section 20, passed by Congress (1916) while this case was pending on appeal in U. S. Ct. of Appeals.

IV.

An injunction in an industrial dispute should not prohibit either persuasion or picketing.

Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 46-51,
U. S. v. Kane, 23 Fed. 748-50;

Allis-Chalmers v. Lodge, 111 Fed. 264;
Beck v. Teamsters' Union, 118 Mich. 497-17-25;
Hamilton-Brown Shoe Co. v. Saxey, 131 Mo. 212;
Gray v. Building Trades Council, 91 Minn. 171-85;
Everett v. Tpyo. Union, 105 Va. 188-203;
People v. Young, 188 Ill. App. 288;
Ex parte Heffron (Mo. App. Ct.), 162 S. W. 652;
American Steel Wire Co. v. W. D. Union, 90 Fed. 608;
Pope Motor Co. v. Keegan, 150 Fed. 149;
Surrell Mfg. Co. v. Terry, 106 N. Y. Sup. 438;
Kinloch Telephone Co. v. Local Union, 265 Fed. 312;
Clayton Act, Sec. 20, enacted by Congress while this case was pending in the U. S. Circuit Court of Appeals.

V.

A court is not warranted in enjoining persons from congregating on the sidewalk, or for addressing remarks concerning the business of another, nor from distributing circulars.

Ex parte Heffron et al., Mo. Ct. of Appeals, 162 S. W. 652;
People v. Young, Ill. Ct. of Appeals, 188 App. 288;
Gray v. Building Trades Council, 91 Minn., 171-82-85;
Marx & Haas Clo. Co. v. Watkins, 168 Mo. 134.

VI.

To prevent an American working man from exercising the right of persuasion, would deprive him of the right of free speech guaranteed by the Constitution. To prohibit this right at or near the plant, on the streets leading to such plant, "or elsewhere," is too general.

Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 45-50;
Marx & Hass Clo. Co. v. Watkins, 168 Mo. 133;
18 Am. & E. Enc. of Law (2nd Ed.), 87;
U. S. v. Kane, 23 Fed. 748;
Kelly v. Robinson, 187 Fed. 415;
Kinloch Tel. Co. v. Electric Worker, 265 Fed. 312 (Ky.);
Clayton Act, Sec. 20, enacted by Congress in 1916, while this case was pending in the U. S. Circuit Ct. of Appeals.

VII.

Where a remedy for any particular wrong or injury has been provided by statute, the general rule is that no relief in equity can be given by an injunction.

Cumberland & Penn. R. R. v. Pennsylvania Co., 57 Md. (267-71);
Weber v. Timlin, 37 Minn. 274;
Hornsby v. Burdell, 9 So. Car. 303-8;
Northern Pacific Ry. v. Whalen, 149 U. S. 157;
Hurd's R. S. of Illinois (1911) (Assault), Sec. 23, p. 753.

VIII.

Equity will not interfere to prevent the commission of criminal or illegal acts, unless there is some interference with property rights.

In re Debbs, 158 U. S. 564-93;
Northern Pacific R. R. v. Whalen, 149 U. S. 157-62.

IX.

No employer may have a right of property in his workingmen.

High on Injunction, Section 20;
Northern Pacific R. R. v. Whalen, 149 U. S. 157-162;
Section 6 of the Clayton Act, enacted by Congress (1916) while this cause was pending on appeal in U. S. Circuit Ct. of Appeals.

X.

Lawful and unlawful means distinguished.

Everett v. R. T. Union, 105 Va. 188-99;
Kane v. U. S., 23 Fed. 748-51;
U. S. v. Elliott, 62 Fed. 801;
Gray v. Building Trades Council, 91 Minn. 171-81;
Franklin Union v. People, 220 Ill. 355-88;
High on Injunction, Vol. II, page 1421, Sec. 1415j;
Beck v. Teamsters' Union, 118 Mich. 497-527;
Diamond Block Coal Co. v. United Mine Workers (Ky.), 222 S. W. 1079.

XI.

The evidence in the whole did not warrant the findings of the District Court as set forth in the final decree.

People v. Sullivan, 218 Ill. 437;
Dalton v. U. S., 154 Fed. 461-63;
Iron Molders Union v. Allis-Chalmers, 166 Fed. 45.

XII.

The decree is fatally defective because of its ambiguity and vagueness.

10 Enc. of Pl. and Pr., 1040;
22 Cyc 959-966;
Whipple v. Hutchison, 4 Blat. 190-92;
High on Injunction, 1st ed., Vol. I, Sec. 38, page 26;
Laurie v. Laurie, 9 Paiges Chy. (N. Y.) 234;
Moat v. Holbein, 2 Edw. Ch. 188;
Avery v. Onillion et al., 10 La. 127;
St. Louis Min. & Mill. Co. v. Montana Mining Co., 58 Fed. 129-32;
Arthur v. Oakes, 63 Fed. 310-15-19-27;
Swift & Co. v. U. S., 196 U. S. 375-401;
Iron Molders Union v. Allis-Chalmers, 166 Fed. 45-52.

XIII.

No constitutional question being involved, complainant is compelled to rely solely upon diverse citizenship to confer jurisdiction.

XIV.

As to whether or not a statute is to be given a retroactive effect depends on the language of such statute.

Clayton Act, Sections 24, 25;
Moog v. Randolph, 77 Ala. 597;
Wrightman v. Boone Co., 88 Fed. 435;
Sturgiss v. Carter, 114 U. S. 511;
Vol. IX, Cyc, p. 5;
Vol. XXXVI, Cyc, p. 5;
Vol. XXVI, Am. & E. of Law, p. 529;
Duplex Printing Press v. Deering, 254 U. S. 443.

ARGUMENT.

I.

To charge the Tri-City Central Trades Council with being an unlawful conspiracy is clearly erroneous. According to the evidence, the Trades Council, composed of thirty-seven local unions, has one purpose in view: "To bring within the folds of organization every department of productive industry in the Tri-Cities and vicinity, and to attach them to this union for the purpose of securing their co-operation in defending and advancing the interests of the working classes" (Abs., pp. 43, 60); "to assist each other in securing fair remuneration for labor and forcing recognition of our rights as free citizens, to join and participate in any organization not in violation of the fundamental laws of the land, and enforce that right by withdrawing and using our utmost influence to induce others to withdraw all patronage from all employers who seek to control the mind as well as the labor of the workers * * * to settle all disputes between employers and employes in relation to wages, etc., by arbitration instead of strikes" (Abs., p. 60). Galloway, the president, testified "that when unable to settle disputes by arbitration we strike" (Abs., p. 46). Surely, there is nothing in the constitution

and by-laws to warrant anyone in making the charge that the Central Trades Council is an "unlawful conspiracy," and yet the trial judge so held (Abs., p. 63). The word "conspiracy" was defined in the Pettibone case (148 U. S. 197) as:

> "A combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means."

There is not a scintilla of evidence that the Tri-Cities Central Trades Council, or other of the defendants, formed, or attempted to form, a conspiracy. When the company declined to arbitrate the wage dispute, efforts were made, through lawful means, to keep men from entering or working at the plant, until the company would advance the wages to the former scale or arbitrate the difference (Abs., p. 46). Surely, they had this right. Peaceful picketing, we contend, is not unlawful.

President Galloway testified: "The pickets were not authorized to commit any unlawful act. That wasn't the intention of the Central Trades Council; that isn't the way the Council carries on business" (Abs., p. 46).

Lamb, who represented the Machinists' Union, testified: "The pickets conveyed information to those seeking employment, going in there, that a strike was on, and asked their co-operation not to go in under the reduced rate. We absolutely did not authorize any assaults to be committed" (Abs., p. 48).

Wade, treasurer of the Tri-City Central Trades Council, testified: "We indorsed the action in reference to the pickets. We didn't authorize any unlawful or wrongful act" (Abs., p. 58).

Cavenaugh, the secretary, testified: "No one connected with the Council authorized any unlawful act" (Abs., p. 57).

If unlawful acts were committed these may not be charged to the Tri-City Central Trades Council.

In the Karges case (165 Ind. 420) the Amalgamated Union was charged with being an unlawful conspiracy, but the Court said it was not. If individuals were guilty of having committed assaults, the injunction might be applied to them, but not to the Amalgamated Union, for the reason stated on page 426:

> "The peaceful policy adopted by the union and given as instructions to the pickets was adopted and given in good faith."

In the case at bar, the testimony of the officers of the Central Trades Council is to the effect that no unlawful act was authorized. Quite true, there is a difference of opinion as to what may be considered lawful. The officers of the Trades Council believed that to place pickets on the streets leading to the plant, to try and persuade working men not to go into the plant to work while the strike was on, was within the law. The District Judge, however, was of the opinion that any kind of picketing was unlawful (Abs., p. 64). At common law, under a decision rendered in 1721, labor unions in England were held to be criminal conspiracies. An act of Parliament in 1824 legalized labor unions. Even after the passage of the act some English courts continued to outlaw them as combinations in restraint of trade, but legislative enactment in 1876 has made labor—in England—free (24 Cyc, pp. 818-19).

> "Legislatures as well as courts now recognize the rights of laboring people to organize for the purposes of promoting their common welfare, elevating their standard of skill, advancing and maintaining their wages, fixing the hours and rate of wages" (24 Cyc 819).

In the Everett case (105 Va. 188) the Court said:

> "It is now well settled by the decisions of the courts of the U. S. and of the highest courts of

a majority of the states in the Union, that labor may organize as capital does for its own protection and to further the interests of the laboring class" (p. 194).

"While at common law, interpreted by the English decisions, and a few of the earliest decisions of the courts in this country, labor organizations formed for the purpose of controlling the rate of wages were regarded as a criminal conspiracy, but these early decisions of the courts of this country were soon departed from by other cases, notably in Massachusetts, New York and Pennsylvania, which placed labor combinations upon legal equality with capitalistic combinations, by holding that it was not a criminal conspiracy for workmen to combine for the purpose of enhancing the rate of wages" (p. 195).

The trial judge who heard the evidence in this case had not gotten away from the early decisions of the English and American courts, for he said:

"This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now, such a combination is unlawful" (Abs., p. 63).

On page 64 he said:

"The proof here sustains the averments of the bill as to the illegal combination; such a combina-

tion cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful."

In the Kane case (23 Fed. 748) the Court held:

"That to establish a conspiracy—an unlawful combination—it must be shown the defendants entered into an agreement to do an unlawful thing. If such an agreement was entered into then the act of one would be the act of all. But where no such unlawful agreement was entered into, the unlawful act of one would not bind the other."

Unless this Court will hold an agreement to do peaceful picketing, thus try to enforce a demand, unlawful, then the contention that the Central Trades Council is an unlawful combination is without merit. When the management of the steel plant declined to restore the former scale of wages, and refused to arbitrate the wage dispute, there was no other alternative except to order the strike and to enforce such strike order through peaceful picketing. To prove that there was peaceful picketing all we have to do is to consider the testimony of the officials of the company:

Welcher, the superintendent, testified: "I saw no assaults committed; I saw no disturbance" (Abs., p. 25).

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Hoffman, the foreman, said: "All I saw them do was to talk to the men. I saw no assaults; 100 feet was the nearest I ever saw the pickets to the plant" (Abs., p. 36).

Hall, the master mechanic, testified: "I never saw any acts of violence nor any of the assaults" (Abs., p. 40).

Floyd, the chief employment officer, who was stationed at the main gate and had an unobstructed view of the Wabash crossing and beyond, said: "All I saw was the pickets talking to the men, and the men being stopped. I did not see any of the particular attacks mentioned" (Abs., p. 34).

At no time did the pickets, the defendants, nor anyone connected with the Tri-City Central Trades Council enter the plant. The testimony of the officers of the steel plant is that on one occasion they—the pickets—were twnty feet distant (Abs., p. 25). All of the other times they were over at the Wabash depot, 150 yards from the plant (Abs., pp. 34, 36).

Welcher, Hoffman and Hall were continually passing in and out of the plant, and had there been any assaults committed by the pickets would surely have been witnesses thereto. Welcher testified that the defendants had done no direct damage to the plant (Abs., p. 25). But he did say that he had been told that the plant was going to be burnt (Abs., p. 26).

It does not appear of record, but when he was asked who told him, he could not remember. Looking at the plant from the outside it would appear that to burn down such a steel plant would be a most difficult task. It could be blown up with dynamite, but the workingmen affiliated with the Central Trades Council are not dynamiters. That kind of work is peculiarly of the I. W. W. type. With this, unlawful class, those connected with the American Federation of Labor have nothing in common. If there are those connected with the Tri-City Central Trades Council who believe the "strike breakers" to be responsible for the assaults committed, hoping thereby to lay a foundation for the injunction proceedings, the action of Mr. Davis, the general manager, is warrant therefor.

When the Commercial Club had called a joint meeting of representatives of the plant, the Tri-City Central Trades Council, City Officials and officers of the Commercial Club hoping to adjust the differences:

Galloway testified: "I had a conversation with Mr. Davis and when I stated that some of the men they had imported in there as strikebreakers had shot at some of our men, Mr. Davis told me that the only trouble with the men who did the shooting was that they didn't shoot straight enough." Mr. Davis is connected with the foundries and the man that did

the shooting was an employe of the foundries (Abs., p. 45). It would seem such a statement required some kind of an explanation from such official, who was at that very moment sitting in court near counsel. But he did not go on the witness stand.

In the Thomas case (62 Fed. 805), wherein one Phelan was charged with having instigated a boycott against the handling of Pullman cars, the Court, on page 87, said:

> "Now it may be considered in the outset that the employes of the Receiver had the right to organize into or join a union which should take joint action as to their terms of employment. It is of benefit to them and to the public that laborers should unite in their common interest and for lawful purposes. They have labor to sell. If they stand together they are often able, all of them, to command better prices for their labor than when dealing singly with rich employers because the necessities of the single employe may compel him to accept any terms offered."

In the Kemp case (255 Ill. 220), the Court said:

> "Labor unions have long since been recognized by the courts of this country as a legitimate part of the industrial system of the nation. The ultimate purpose of such organization is through combination; to advance the interests of the members."

In the Gray case (91 Minn. 171), the Court said:

> "Labor organizations or unions, are not unlawful, but are legitimate and proper for the advancement of their members."

In the Beaton case (102 Ill. App. 128), the Court said:

> "The right of workingmen to organize and combine for their own protection is no longer an open question."

In the Franklin Union case (220 Ill. 355) and the Barnes case (232 Ill. 425), the Court was inclined to hold a labor union to be a conspiracy, but in the Kemp case (255 Ill. 213) these holdings were repudiated.

On page 405, Justice Carter said:

> "In the last half century the changes in machinery and in social conditions generally have not only greatly affected economic theories, but have required many changes in the law so as to conform to altered social needs. New statutes have been enacted, but independent of any statute the courts have gradually adapted the fundamental principles of the law to changing conditions."

In the Allis-Chalmers case (166 Fed. 49), the Court said:

> "It was shown that the local unions of Milwaukee had a conference and agreed upon a scale of wages, and because they acted as a union it was sought to make it appear they had entered into a conspiracy, but the Court held otherwise."

In the case at bar the workmen of the three cities were represented by the Tri-City Central Trades Council; thirty-seven locals were represented, and these comprised the various crafts. Welcher, the superintendent, testified:

> "We had only called for in round numbers 300 men and had laid off approximately 1,300; 80 or 90 per cent of the employes were old men. I assume these men were members of the various organizations; I can't state definitely as to that" (Abs., p. 41).

He does not say this 80 or 90 per cent were members of the local unions represented in the Tri-City Central Trades Council, but every one who heard him was cognizant that he meant just that. The Tri-City Central Trades Council was a defendant. He knew of the locals comprising it and he knew, furthermore, that it was the organization that by adopting plans of cooperation made it difficult for him to operate his plant.

In some instances efforts are being made to bring about greater co-operation between trades unions and employers' associations.

These employers believe that by treating with union officials they may the better stabilize industry. To be able to agree on a scale of wages for a particular period enables the employer to make contracts. As between a union affiliated with the American Federation of Labor committed to the principle of "Collective Bargaining"—and which has respect for property rights, and an organization such as the I. W. W., which has no regard for property rights and which does not believe that the employer has any rights the employe should respect—these employers have wisely —as we believe—chosen to recognize the former. Working men affiliated with the American Federation of Labor believe that only through organization may the condition of the wage earners be improved. In the event some "arbitrary employer" should reduce the scale of wages and refuse to arbitrate the difference, it is not their policy to commit murder or destroy property. They place pickets near the employer's plant to try and persuade other workingmen from entering, hoping thereby to make the employer see things in a different light. This the Tri-City Central Trades Council did. The injunction prohibiting peaceful picketing was issued on May 20, 1914, and up to this time has been cautiously ob-

served. Not even one contempt case has arisen. The strike called on April 21, 1914, is still on, and the workingmen of the Tri-Cities are as much interested in the final outcome as when the injunction was first issued. If this Court should declare "peaceful picketing" to be unlawful, then the labor union, composed of law-abiding wage earners—such as is the Tri-City Central Trades Council—shall be deprived of its only weapon to combat the "arbitrary employer." No better argument in behalf of organized labor was ever made than the one of John P. Morgan before the Industrial Commission. When asked if $10 per week was enough for a longshoreman with wife and children, he replied, "Yes, if that is all he can get." The question arises, how may he get more other than through organization? If this Court should uphold the District Judge who held the Tri-City Central Trades Council to be an unlawful combination, then every local affiliated with the Tri-City Central Trades Council or the American Federation of Labor—and the Federation itself—will be placed in the category of "outlaw organizations."

If the labor movement—represented by the American Federation of Labor—is thus destroyed, then the most potent force, probably in the country to combat the "Red peril of Bolshivism" shall have been put out of commission.

If the arbitrary employers only know the efforts now being put forth by I. W. W. and the Cummunists and Red Flag Soviets to control local unions, affiliated with the American Federation of Labor—as well as of the Federation itself—we doubt that these would indirectly lend their aid to such lawless class.

While this case was pending on appeal in the United States Circuit Court of Appeals Congress (1916) enacted the Clayton Act, section 6 of which declares "Nothing contained in the Anti-Trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or considered to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws." The undisputed evidence shows the Try-City Central Trades Council was organized for "mutual help," has no capital stock and is not conducted for profit.

It was not unlawful for the Central Trades Council to order the strike. After the representatives of the company refused to confer with the committee there was no other alternative. If the testimony of Welcher, the superintendent of the plant, is to be believed,

then 80 or 90 per cent of the men employed in the mill were members of the local organizations (Abs., p. 41), and the testimony of the officers of the Central Trades Council is conclusive that the action of the Council was taken upon request of those employed in the plant. All the Tri-City Central Trades Council sought to do was to compel the management to restore the former scale of wages or submit the wage dispute to arbitration. If assaults were committed those guilty were not acting for or on behalf of the Trades Council. Complainant has said that the Tri-City Central Trades Council did not represent its employes. If it represented 80 or 90 per cent that was the major portion. The superintendent said that 80 or 90 per cent of the 400 or 470, were old men and he believed them to be members of the various organizations (Abs., pp. 25-41). He certainly had no other organization in view other than the locals represented in the Trades Council. These men employed in the mill and the ones who made complaint to the Central Trades Council and asked its cooperation (Abs., pp. 45, 57). In the Allis-Chalmers case (166 Fed. 49), the Court said:

> "Nothing in the record indicates that there was any want of good faith in making the demands or that the strike was undertaken with any purpose other then to enforce them."

In that case all of the molders' unions of Milwaukee had agreed to work together. In the case at bar all of the local unions in the three cities were co-operating.

In the Hannahan case (121 Fed 563), the point was made that officials of the Railroad Brotherhood, who were not employes, had no right to issue a strike order. The Court, however, held otherwise.

In the Thomas case (62 Fed. 818), the question of the right of railroad employes to boycott the handling of Pullman cars was involved. The receiver said his railroad was under contract to handle them. The Court, in passing on this question, said:

> "The distinction between an ordinary lawful and peaceful strike entered upon to obtain concessions in the terms of the strikers', employment and a boycott is not a fanciful one, or one which needs the power of distinction to determine which is which."

The employes of the steel foundries were not under a contract of any kind. They could quit the service any time. In some cases—a strike of railroad employes—the public might be interested, but no public right is involved in this case. The company had the right to close its plant if it chose to do so; and the men had the right to quit.

On page 817 (62 Fed.), the Court said:

> "It may be conceded that the employes of the Receiver had the right to organize into or join a union which should take joint action as to the terms of employment. If they stand together they are often able, all of them, to command better prices for their labor than when dealing singly with rich employers, because the necessities of a single employe may compel him to accept any terms offered."

In Judson on Interstate, on page 116, we find the following:

> "A concerted cessation of employment, as in strikes, results also in interference with interstate commerce and may involve widespread public inconvenience, but that is the incidental result of a lawful right."

The steel plant did suffer inconvenience no doubt, as a result of the strike order, and as a result of the peaceful picketing, because the witnesses said so.

Welcher, the superintendent, testified:

> "The plant is losing money right along. There is no claim we have lost money by what the defendants did, but we have lost money therefrom. Our machinery has gotten in very bad shape, we have been compelled to employ men to operate various machines who were not as

efficient as the men we had prior to April 22" (Abs., p. 25). (April 22 is the day the strike was declared.)

Floyd, chief timekeeper, said:

"When we started our plant on the 6th of April, I had plenty of applicants for such work; from the 24th of April up to the time of issuance of the restraining order the situation changed materially (Abs., p. 34). The rest of the plant cannot operate without the cranemen and other skilled laborers" (Abs., p. 34).

In the Kemp case (255 Ill. 724) the Court said:

"It has been, comparatively, but a short time since it was unlawful for workmen to associate themselves together under such organizations as trade unions * * * such organizations were held to be conspiracies * * * but the right to organize and strike if necessary is now generally recognized."

The claim that the Tri-City Central Trades Council did not represent the workers in the plant is beyond our comprehension.

According to Welsher's testimony, of the 1,300 laid off in November, only about 400 were called for (Abs., p. 41). He said that 80 or 90 per cent were old men and members of the various organizations. If a man is "laid off" that does not signify he has severed his

connection with his employer. It was these employes—the 80 or 90 per cent—who, as members of "various organizations," made complaint to the Tri-City Central Trades Council.

Galloway testified:

"As president of the Central Trades, I first learned of a controversy between wage earners and the foundries from the delegates of the various trades who were refused any wages at that plant and made complaint of the central body that their wages had been reduced from 2 to 9 cents an hour" (Abs., p. 43).

"After the council received complaints about the reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the central body and asked for its co-operation in the matter of arbitration with the foundries. A committee was appointed by the central body to wait upon this corporation to arbitrate the question (Abs., p. 44).

"As chairman, I went in to see Mr. Welcher, and stated the case to him (Abs., p. 44). Mr. Welcher said that he would not meet with a representative of organized labor; that if anybody around the plant had a grievance to come as individuals (Abs., p. 44).

"This was about the 20th or 21st of April. It was reported back to the joint board and a strike was declared on the plant. A committee of the joint board of the Tri-City Central Trades Coun-

cil selected these pickets, rather, they were from the different crafts that were connected with the reduction of wages. The joint board placed pickets down there at the Wabash depot, along the streets leading to the plant, and we sanctioned their action" (Abs., p. 45).

Cavanaugh, secretary of the Tri-City Central Trades Council, testified at the regular meeting on April 15th of the Tri-City Central Trades Council, a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday, the 19th. Ten or eleven trades were represented and we decided to call on the American Steel Foundries and see if we could not have the wages reinstated or arbitrate the matter (Abs., p. 57). I wasn't present at the arbitration planned meeting which was on the 20th of April. At the meeting Wednesday evening the committee reported they failed to reach an agreement and the management said they had nothing to arbitrate (Abs., p. 57).

Cross-Examination.

"On April 15 we had a communication from the unions representing some of the trades working in

the foundries. We had complaints from the men themselves working at the foundry" (Abs., p. 58).

Hartbeck, member of the Blacksmiths' Union, testified: "I have been at meetings of the Central Trades Council and heard it reported about trouble between the complainant and the employes" (Abs., p. 50).

Welcher, the superintendent, stated that "Only two men left our employ in response to the strike order" (Abs., p. 41). And yet he testified: "We ran our plant without any trouble with our men until the morning of the 23rd of April" (Abs., p. 41). "It was impossible to keep ourselves properly employed with the right class of labor to operate the plant" (Abs., p. 41). "Prior to the calling of the strike we had no trouble in securing labor at the plant" (Abs., p. 23). "We have been compelled to employ men to operate various machines who were not as efficient as men we had there prior to April 22" (Abs., p. 25). "We had no trouble with our class of men from April 6th to April 22d" (Abs., p. 25).

Lamb, business agent for the machinists, testified: "Prior to the strike some of the men in my organization were employed at the plant. We called them out after the strike was declared" (Abs., p. 48).

Cross-examination: "On the 22d or 23d of April, I think five of our machinists were in the plant. One

by name of Missel, who quit of his own volition, and Tom Churchill and Hamp and Drogg. Drogg was what we called a semi-machinist" (Abs., p. 48).

Hartbeck, business agent Blacksmiths' Union (Abs., p. 50), testified: "When the reduction of wages took effect I was ordered by my superior of our district board to go over there and to have men over there that would go to work to try and have them come out if they could under reduction of wages. Probably some of our men would go in unbeknowing to the trouble. At the time I went over there none of our men were at work in the plant because they had been sent for" (Abs., p. 51).

Cook testified (Abs., p. 56): "I am an electrician and belong to none of the unions. Worked at the plant about three weeks after it started up. I quit because they cut my wages" (Abs., p. 56). "Floyd said I was going to get 26 cents an hour and when payday came I got 23. Worked four or five days longer and quit because they said there was a strike on" (Abs., p. 56).

Holmes: "I am an electrician. I worked there when the plant closed in November; didn't go back to work in April on account of the reduction" (Abs., p. 55).

Churchill: "I am a machinist. Was working for the plant when it closed down in November and went back to work when they opened, but got an increase over the new men they had, but still it was a reduction" (Abs., p. 52). "I quit because these fellows asked me to go out" (Abs., p. 53).

Fortner (one of complainant's witnesses [Abs., p. 42]) testified: "I worked at the foundry before they closed down in November, running a crane. They resumed work on April 6 and reduced my wages. I worked there from April 6th to April 25th. Went in and out of plant every day and was not molested. It was either Ishman, Lamb or Holmes that told me there was a strike on and I had better quit" (Abs., p. 42). "I don't belong to one of those labor unions. I did belong to the cranemen's local, but I wasn't working for a couple of months before this trouble and I didn't pay my dues" (Abs., p. 42).

Floyd: "The workmen affected by this picketing are the machinists, cranemen and skilled labor. The rest of the plant cannot operate without the cranemen and these skilled laborers" (Abs., p. 34).

While Welcher's testimony showed that 80 or 90 per cent of the 300 men who had resumed work were members of the various locals affiliated with the Tri-City Central Trades Council, our contention is that

none of the remaining 1,300 had severed their connection with the company. These could have returned, but did not do so, because of the reduction of wages.

To say that the Tri-City Central Trades Council has no right to intercede in behalf of the employes of the Mill Company is absurd. The principle of "collective bargaining" is now well established throughout the land and it is the only effective means whereby workingmen may secure concessions through lawful methods. Just how many employes connected with the various locals affiliated with the Tri-City Central Trades Council were working there at the time, or before, we cannot say, but the testimony of the witnesses would indicate quite a number. Welcher, the superintendent, is probably correct when he said: "We only called in round numbers for 300 men and laid off approximately 1,300 men; 80 or 90 per cent of the employes were old men. I assume these men were members of various organizations" (Abs., p. 41). Surely he had no other organization in mind other that the labor organizations affiliated with the Tri-City Central Trades Council. His statement supports that of Galloway, president, and Cavanaugh, secretary, officers of the Central Trades Council, who testified that the employes of the Mill Company had suggested to the Tri-City Central Trades Council that it take up the matter (Abs., pp. 43, 57).

It is just as reasonable that the Tri-City Central Trades Council represent the workers employed, or who had been employed, at the mill as it is for counsel to appear representing the Mill Company. If each employe would have to make the individual claim and contest, why not each stockholder of the Mill Company make a separate defense or contest? Instead of doing this, the stockholders combine and choose officers to represent them. Counsel for the Mill Company represents the stockholders because the officers of the combination retained him to do so. Counsel for the respondents represents the workers in such mill because the officers of the Tri-City Central Trades Council retained him to do so. If stockholders may combine—and we are not saying they should not—why not grant workingmen a like privilege?

The whole trouble in this case arose because of the refusal of the Company to deal with the committee chosen. When the committee called at the plant for an interview—at that time having in mind arbitration—Mr. Welcher, the superintendent, said: "Would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievances to come in as individuals" (Abs., p. 44). Every man of experience knows that when the employes of any concern seek to go it alone, as individuals, they never get anywhere. Without an organization they are an impotent force. Imagine the

employes appointing a committee to call on the manager because of a grievance about pay or hours. Before the committee could secure an audience they would have been discharged. Having been dismissed from the service, they would not be "our employes." This saying, "Merely deal with our employes," is the method adopted by the employer who does not think an employe has any rights or privileges that he should observe. It has been demonstrated that officers of an organization—none of whom are employed in the particular plant—are in a better position to represent the workers because they have nothing to fear.

When the officers and committee of the Tri-City Central Trades Council met in conference with representatives of the Commercial Club the claim was not made that the committee did not represent the employes in the mill. Nor does it appear that up to that time there had been any violence. It was at that time Galloway spoke to Mr. Davis (the general manager) about one of the strikebreakers trying to shoot one of their men, and Mr. Davis replied: "The only trouble with the man that done the shooting was that he didn't shoot straight enough" (Abs., p. 45).

At a time when the law-abiding workingmen of the country affiliated with the American Federation of Labor—as is the Tri-City Central Trades Council—are striving their utmost to maintain the principle of collective bargaining, and at the same time combatting

the evil tendencies of the Bolsheviki-Soviet system which the I. W. W. and other lawless organizations are fostering, it illy becomes a great concern like this mill company to indirectly aid them. Should this Court decide the issues involved as complainant's counsel would have it decided, then every labor union affiliated with the Central Trades Council—as well as the Tri-City Central Trades Council itself—and every organization affiliated with the American Federation of Labor would be declared outlaws. Likewise, the sixteen railroad brotherhoods and the Miners Union would come under the lawless ban. They may not realize it, but no greater calamity could befall the employer class in this country. Only recently in Italy a controversy arose over working conditions and the employers closed the mills. The employes took charge of the mills and plants. When the authorities sought to dispossess them through the military power they found the military allied with the workers.

As long as the American employer recognizes the principle of "collective bargaining"—the cardinal principle of the American Federation of Labor—working men in America will decry the Russian Bolsheviki, Soviet, I. W. W. theories. But should this feature be abandoned and labor unions made outlaws then no man may predict what the future may bring forth.

Employer Has No Property Right in His Employe.

When this case was tried in the U. S. District Court we contended that the complainant had no property right in its employes and therefore should not be permitted to maintain its said cause and that it was only upon the theory of such property right the injunction prayed for against the defendants might be awarded. On appeal to the U. S. Circuit Court of Appeals, page 13 of our brief, it shows that we made the same contention. We believe that the case of Northern Pacific R. R. v. Whalen, 149 U. S. 157-62, is controlling on that point. In that case it appears the railroad company was constructing an extension and had numerous laborers in its employ. A party by the name of Whalen opened a saloon and as a result the workingmen patronized his place, became intoxicated and they were rendered unable to perform the service required.

III.

When the strike was declared, the Central Trades Council, directed that picketing be done. This meant the placing of workingmen on the street near the plant to notify any workmen going toward the plant that the wages had been reduced and to try and persuade such ones not to enter or work at the plant until the company would restore the former scale of wages or agree to arbitrate the differences.

No one connected with the Central Trades authorized anything other than peaceful picketing and there was peaceful picketing because the officials of the steel plant said so.

Welcher testified:

> "I never saw any assaults nor any disturbance" (Abs., p. 25).

Floyd said:

> "I didn't see any of the particular attacks, that are mentioned. All I saw was the pickets talking to the men and the men being stopped. The pickets were stationed between the Wabash depot and the plant" (Abs., p. 34).

Hoffman testified:

> "I have seen these men picketing mainly around the Wabash depot, 150 yards from the plant; on one occasion I saw them 100 feet from the plant (Abs., p. 45); 100 feet is the nearest I ever saw pickets to the plant (Abs., p. 45); all I saw them do was to talk to the men; I saw no assaults" (Abs., p. 36).

Hall said:

> "I never saw any acts of violence nor any of the assaults" (Abs., p. 40).

These officials passed in and out of the plant continually and it stands to reason that if there had been any assaults committed in proximity to the plant these officials would have known about it. In every case the alleged assaults took place some distance from the plant. Hedstrum testified he had been assaulted at the Wabash Station (Abs., p. 27) 150 yards from the plant (Abs., p. 34). Crawford said he was assaulted beyond the Wabash depot (Abs., p. 28). Quinn said he was beyond the depot when assaulted (Abs., p. 29). Melton was in a lunch room across the track when threatened (Abs., p. 30). Francis saw an assault committed near the depot (Abs., p. 31). Bell said he was struck while up near the stamping works (Abs., p. 32).

Floyd saw a basket jerked from a negro over at the Wabash station (Abs., p. 34). Crabtree said some one struck him with fist on Neidringhaus avenue, near Wabash depot (Abs., p. 35). Cantrell testified he was assaulted one square from Wabash depot (Abs., p. 35). Knott said some one threatened him with a knife at Wabash depot (Abs., p. 37). Hillman was six blocks from plant when threatened (Abs., p. 37). Gordon said some one kicked him at the Wabash depot (Abs., p. 38). Stark was struck with a rock after passing Wabash depot going to the street car (Abs., p. 42).

On cross-examination Headstrum said:

> "I didn't recognize any of the men who assaulted me" (Abs., p. 28).

Crawford testified:

> "The only man that I recognized in the crowd was Ishmon Dangles" (Abs., p. 35). (Dangles is not a party to the suit, nor was he present at the hearing.)

Quinn testified:

> "After the fight was over, Hartbeck was the only one I recognized" (Abs., p. 30).

Hartbeck testified:

> "That he did not threaten or assault anyone; I never used any violence of any kind, I tried to persuade men not to work here under the reduction of wages" (Abs., p. 50).

Melton on cross-examination said:

> "I don't know who struck me, it was after dark" (Abs., p. 31).

Francis said among others he saw at the Wabash depot on the 13th (May) was Galloway (Abs., p. 32). Galloway testified he was not there on the 13th (Abs., p. 45). Testified further:

"I did not strike any of the strikebreakers, or other employes leaving the plant, on any other day other than the 13th" (Abs., p. 45).

Bell said the only one he knew was McKenny (Abs., p. 33). McKenny testified the only man he struck was the one who called him a G—d d—m s— of b— (Abs., p. 51).

Whether justified or not, those charged with doing picket duty feel that "strike breakers" were responsible for the assaults committed. It is evident those connected with the Central Trades Council were not looking for any such trouble. The first indication that anything of the kind was in contemplation was when the strike breakers tried to shoot one of the pickets. The president of the council called the general manager's attention to this at the conference called by the Commercial Club, and the only satisfaction he got was: "The only trouble with the man that done the shooting was that he didn't shoot straight enough" (Abs., p. 45). The Mayor of Granite City was present and heard Mr. Davis say this (Abs., p. 47). Lamb, an official of the Machinists' Union, was present and heard the statement (Abs., p. 48). And the strange thing is that Mr. Davis, though in court, did not go on the stand to explain.

In the Goldfield Con. Mine case, 159 Fed. 519, the Court said:

> "When free from contract obligations workmen have a legal right, singly, collectively, or as a union, to strike, and having such right they have the further right to use all lawful means to make the strike effective."

We contend that the Tri-City Central Trades Council was strictly within its rights in doing peaceful picketing. Lawless acts—if any were committed—we have not sought to defend. In the Kelly case (187 Fed. 415) the United States Court of Appeals held "union or other laborers have the right to quit the service, and they may by peaceable means persuade others to quit the service" (p. 417).

In the Allis-Chalmers case (166 Fed. 45), the Court said:

> "An injunction against strikers should not prevent either persuasion or picketing as such."

In the Keegan case (100 Fed. 149), the Court said:

> "One of the forms of persuasion which, under proper circumstances the law recognizes as permissible, is picketing"; "that is to say, a detachment of men in suitable places for the purpose of coming into personal relations with the new

> workmen, in order, if possible, to induce them, by means of peaceful argument, to leave the places which they have taken, for such mutual and proper reasons as may appeal to men of such circumstances."

In the Young case (288 Ill. App. 208), the prosecution sought to have the jury instructed "that intimidation consists of following one, spying after him, stopping and threatening him, or assuming a threatening attitude toward him." But the Court replied, saying:

> "Such an erroneous interpretation would deprive a citizen of the right to argue and persuade his fellow employes to quit."

In the Franklin Union case, 220 Ill. 355, an injunction was granted holding concerted action of the union to be a conspiracy. Had this come up on a direct hearing instead of on a contempt proceeding, it is a question whether such holding would have been made. The Court, however, divided. Justice Boggs, who wrote the minority opinion, on page 385 said:

> "The employers of the printers had organized an association in Chicago to enable them to act as an organized body and the law wisely permits the workingmen to form organizations."

On page 388 he said:

> "It is argued by appellee, however, that persuasion necessarily leads to disagreements, quarrels, force and violence, and, therefore, should be enjoined. * * * The question is not whether persuasion leads to acts of lawlessness, but whether persuasion itself is unlawful. A man should not be enjoined from doing an act merely because that act may lead to the doing of some wrongful act. If such an argument be followed to its logical conclusion, it would be proper to enjoin the strikers from leaving their homes, while the strike continues, because if they are kept at home no violent encounters will take place between them and those who are in the employment in question, while if they are permitted to go upon the streets affrays may occur. The law will be satisfied if the striker be punished when he does a wrongful act. It is not just to punish him for doing such an act, rightful in itself, merely because that act may lead to something not intended."

In the Barnes case (232 Ill. 425) the Court indicated that for wage earners to combine or do peaceful picketing would be wrong. Had this question come up on a direct proceeding instead of on a contempt issue the decision might have been otherwise. Be that as it may, the Court divided on the question. Justice Farmer, who wrote the dissenting opinion, concurred in by Justice Scott, declared that the ma-

jority holding was contrary to the spirit of the time (p. 41).

In the Kemp case (255 Ill. 213) the Court went so far as to hold that it was not a conspiracy because men formed a union and agreed to not work with non-union men. In the case at bar the Trades Council made no such demand. Continuing, the Court, on page 220, said:

> "That the purpose of organizing labor unions was to gain strength, and that the officials of the labor unions were merely the agents of those affected. Labor unions have long since been recognized by the courts of this country as a legitimate part of the industrial system of the nation. The ultimate purpose of such organization is through combination to advance the interests of the members by obtaining for them adequate compensation for their labor, and it has been frequently stated by the American courts that the fact that this purpose is sought to be obtained through combination, or concerted action, does not render the means unlawful" (p. 221).

Continuing, the Court said:

> "Appellees rely upon the Franklin Union case, 220 Ill. 355, and the Barnes case, 232 Ill. 424. In these cases the employes had gone out on strike and injunctions had been secured. The injunctions had been violated—while the matters in-

volved in each case grew out of acts following a strike of union employes, the question of right to strike was not involved" (p. 232). "The case at bar partakes of none of the elements of a boycott. The primary object of a boycott being to inflict injury upon another, has been held to be illegal. Here the primary object of the combination is to further the interests of the organization and improve the condition of its members. Whatever injury may follow to others is merely incidental" (pp. 234-35).

Counsel for the steel plant has cited the Franklin Union and Barnes cases, but if we are any judge the Court in the Kemp case (255 Ill.) has refused to follow any ruling therein made. The Hitchman case (Hitchman etc. v. Mitchell, 245 U. S. 229) is no criterion; in that case the employes of the mining company had signed contracts not to join the union. The officials of the Miners' Union, the Court says, knew this, and tried to have them violate it. In the case at bar not even one witness said anything about a contract.

In the Duplex case, 254 U. S. 443, neither the question of a combination nor peaceful picketing was considered. The only question involved was the right to boycott. In the case at bar not even once on the hearing was the word "boycott" used.

In the Allis-Chalmers case (166 Fed. 45) the United States Court of Appeals of this, the Seventh Circuit,

upheld peaceful picketing. It did so again when the case at bar was pending therein. In our judgment, it is this Court that should be sustained.

While pending in the United States Court of Appeals, Congress passed the Clayton Act, Section 20, which specifically mentions peaceful picketing. We believe this Court should hold peaceful picketing to be lawful, without regard to the Clayton Act. If the Clayton Act is retroactive, as we believe it to be, then such act will, no doubt, prove conclusive.

V.

When a District Court goes to the extent of enjoining workingmen—whether engaged in picketing or not—from making free use of the streets of a city, surely such persons should be entitled to relief through some higher tribunal. The decree prohibits the Tri-City Central Council and the other defendants from "assembling, loitering or congregating about or in proximity of said plant or factory—for the purpose of doing or aiding or encouraging others in doing any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets and from doing any acts or things whatever in furtherance of any conspiracy or combination among

them." All this in connection with its "business" or its "foundries in the City of Granite City **or elsewhere.**" Probably every street in Granite City leads to the complainant's steel mill, hence every person who is attached to the Central Trades Council is obliged to keep off the streets, but that is not all. Complainant may have a "business" other than the foundry, these parties must ascertain the location of such "business" and keep off any street leading thereto—not satisfied with mentioning "factory and business," they have incorporated the words, "or elsewhere." Under this decree the defendants could be charged with contempt should such ones assemble before complainant's plant in Gary, Ind., or before its place of business in Chicago.

In the bill (Abs., p. 4) complainant complained because hand bills were distributed calling attention of workingmen that there was a strike on. No mention, however, is made of this in the final decree.

In the Watson case (168 Mo. 134) a controversy arose over wages, and a strike ensued. The Court said:

> "In this case the question of wages was involved and because of a refusal to work unless certain demands were complied with an injunction was sought. A circular was issued, which complainant considered an effort to boycott."

On page 144 the Court said:

> "Section 14 of our Bill of Rights declares 'No law shall be passed impairing the freedom of speech; that every person shall be free to say, write or publish whatsoever he will, on any subject, being responsible for all abuse of that liberty.' The evident idea of that section is **penalty** or **punishment** and not **prevention**. Because if prevention exists, then no opportunity can possibly arise for one becoming responsible by saying, writing or publishing whatever he will on any subject. The two ideas, the one of absolute freedom to say, write or publish whatever he will on any subject, coupled with responsibility therefor, and the other idea of preventing any such free speech, free writing or free publication, cannot co-exist."

In that case it was sought to show the injunction should be issued because the persons sought to be restrained were financially irresponsible; but the Court said:

> "This Constitution is no respecter of persons; the poor man should not be enjoined more readily than the most wealthy man in the community."

Today there is a tendency to deride organizations of workmen, and yet there is no movement which has done more for the uplift and the betterment of mankind. The trades movement means fraternity, the

abolition of the spirit of hate and bigotry, develops the manly spirit in man, makes him more independent, establishes the principles of rights and abolishes the system of wrongs, makes the workshop or mine a safer place to work, fosters education, and uproots ignorance, increases wages and controls the length of the work days; develops manhood and opposes tyranny; induces liberality and reduces prejudices; makes labor free and balks the plans of those who would create involuntary servitude. The whole tendency of the trades movement is designed to make tomorrow a brighter and better day than today.

In the case at bar no effort was made to compel the Mill Company to employ none other than those attached to the unions. Any improvement in conditions would have been enjoyed by all workingmen in such plant, union and non-union alike. Any scale of wages adopted would necessarily have to apply to all.

VI.

This we covered in point IV.

VII.

It is our contention that in this case no injunction should have been issued because no property right was involved. Welcher, the superintendent, testified: "The defendants have done no direct damage to the

plant" (Abs., p. 26). If the plant lost money, it was because the management must have known there would be a shortage of workmen. Welcher said: "Our machinery has gotten in very bad shape; we are compelled to employ men who are not efficient" (Abs., p. 25). Hence, rather than restore the November scale of wages and procure efficient help, he chose to hire inefficient help at the reduced scale. Rather than submit the wage dispute to arbitration, thus bringing into the plant the old and experienced employes, he chose to say at the conference arranged by the Commercial Club: "We have no arbitration offer to make to these laboring men" (Abs., p. 41).

In the Whalen case (149 U. S. 157), the Railroad Company was building an extension and had a thousand men in its employ. Whalen ran a saloon and the workmen drank liquor, and the company sought an injunction to prevent him from operating the saloon and selling liquor on the ground the employes became drunk and were unable to render efficient service. The Court, on page 162, disposed of the case by saying:

> "No employer has such a property in his workmen, or in their services, that he can, under the ordinary jurisdiction of a court of chancery, maintain a suit, as for a nuisance, against the keeper of a house at which they voluntarily buy intoxicating liquors and thereby get so drunk as to be unfit for work."

On page 163 the Court said:

> "As a corporation cannot be said to have life or health or senses, the only ground on which it can obtain either damages or an injunction, under these provisions, is injury to its property."

In the case at bar complainanant would have it appear that it has a property right in its workmen. If they do not so claim, then of what concern is it that an employe gets into a controversy with another outside and some distance from the plant?

While this case was pending on appeal in the U. S. Circuit Court of Appeals, Congress (1916) passed what is known as the Clayton Act, section 6 of which provides:

> "That the labor of a human being is not a commodity or article of commerce."

XII.

There have been "dragnet decrees" issued heretofore, but no decree ever issued, we believe, ever included so much and was more ambiguous (Abs., p. 66). It begins by assuming that the officers and agents of the Tri-City Central Trades Council and other defendants have combined—they are enjoined from in any way or manner whatsoever—by use of persuasion—from

interfering with, hindering, obstructing or stopping any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City—or elsewhere; or from interfering by persuasion—in any manner with any person desirous to be employed by said steel foundries; and from inducing or attempting to compel or induce by persuasion any of the employes of said foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employes of said foundries; and from preventing any person by persuasion from entering into the employ of said foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of said plant for the purpose of doing, or aid or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of complainant or on the streets leading to the said premises any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them; from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid. What conspiracy or combination had counsel who proposed the decree in view?

proposed

In the Laurie case (9 Paiges N. Y. 234), after securing a divorce the husband was enjoined from "annoying, following, harming or offering any personal violence to the wife or children." On appeal from such decree the Court said: "As the defendant is bound to obey the process of the Court at his peril, language of the injunction should in all cases be so clear and explicit that an unlearned man can understand its meaning without the necessity of employing counsel. And the language of the writ should at the same time be so restricted as not to deprive him of any rights which the case made by the bill does not require that he should be restrained from exercising." The decree in the case at bar prohibits "picketing or maintaining pickets at or near the premises of complainant or on the streets leading to the premises. Granite City has a population of probably 30,000. Suppose some member of the Trades Council, two miles distant from the plant, was to speak to a strike breaker about working at the plant. "In any manner whatsoever" would cover his case, and he could be cited for contempt. Suppose this took place in St. Louis or Chicago; "or elsewhere" would apply. Then, again, should some members of the Trades Council meet on one of the streets of Granite City and stop to greet each other, the "assembling, loitering or congregating" could be

applied to them. In the Avery case (10 La. Ann. 127) the Court dissolved an injunction, saying:

"It would be a snare for the defendant."

The injunction issued in the case at bar is the worst kind of snare.

In the Swift case (196 U. S. 375) an injunction had been issued restraining the company from an alleged violation of the Sherman Anti-Trust Act. On appeal the Supreme Court struck out the words, "against any other method or device," giving as a reason "that it was bound by the first principle of justice not to sanction a degree so vague as to put the whole conduct of defendants' business at the peril of a summons of contempt." In the case at bar the liberty of approximately 5,000 men connected with the Central Trades Council has been subject to the peril of a summons of contempt. Speaking further, the Court, on page 401, said:

> "The general words of the injunction, 'or by any other method or device,' and the word 'combination' should be stricken out. The defendants ought to be informed as accurately as the case permits what they are forbidden to do."

In the Sanders case (158 Fed. 132) where the question of mining was involved, the Court said:

> "The writ as a general rule ought to contain a concise description of the particular acts or things in respect to which the party is enjoined, that there may be no misapprehension on the subject."

In 166 Fed. 46 the Court modified the decree by striking out the words "persuasion" and "persuading." In the case at bar practically everything the defendants are enjoined from doing should be stricken out. But to compel the defendants to pay the costs for correcting the decree would be unjust. When this case was in the U. S. Circuit Court of Appeals the final decree was ordered modified and the case reversed (Abs., p. 87).

XIV.

After the final decree had been approved in the District Court at Springfield, and after an appeal had been taken, and such appeal was pending in the United States Circuit Court of Appeals, Congress did, on October 15, 1916, enact what is known as the Clayton Act. While reference to such act was made on page 27 of defendant's brief filed in said Court of Appeals nothing appertaining thereto appears in the opinion

filed by said Court (Abs., p. 87). The issues involved having been decided favorably to appellants (respondents in this court), we have no complaint to make in this regard. We believe, nevertheless, that the Clayton Act is retroactive and might well be applied to the issues involved.

The excerpts of the law which we believe will govern in this cause are:

> "Section 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws."
>
> "Section 20. That No Restraining Order, Etc. —And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising or persuading others by peaceful and lawful means so to do, or from paying or giving to or

withholding from any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be a violation of any law of the United States."

As to whether or not a statute is to take effect immediately or at a certain specified time, the intention of the act itself must determine. At the conclusion of the act we find:

"Section 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command, entered in any suit or action brought or prosecuted in the name of, or in behalf of, the United States, but the same, and in all other cases of contempt not specifically embraced within Section 21 of the Act, may be punished in conformity to the usages at law and in equity now prevailing.

"Section 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution of the same act

or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this act."

It is obvious that had the lawmakers wished the act to exempt any injunction proceeding pending they would have done so. They did except contempt proceedings pending, and that shows it was not their intention to exempt the ordinary injunction proceedings or they would have said so.

Hence the Clayton Act applies:

"Contempt," as defined in Volume IX of Cyc, means "disobedience to the Court." And in the case at bar there was no disobedience of any court order

"A contempt of court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof."

Vol. IX of Cyc, page 5.

In Cyc, Vol. XXXVI, under the heading of "Statutes," may be found:

Exceptions and Savings Clauses.

An exception differs from a proviso in that the exception exempts something absolutely from the operation of the statute by express words in the enacting clause, while a proviso follows the enacting clause and operates to defeat its operation conditionally.

A savings clause contains an exception of special things out of the general things mentioned in the statute, and its most common use is in repealing statutes for the purpose of saving from their operation rights accrued, duties imposed, penalties incurred, and proceedings commenced (p. 1163).

The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the Legislature (p. 1106).

A statute is prospective only which expressely declares that it is not retroactive, which by its terms is to apply to actions or to things done "hereafter" or "thereafter" or is to take effect at a future date, or which contains, in the enacting clause, the phrase, "from and after the passing of this act," in which expressly excepts rights acquired prior to the passage of the act, or "actions now pending," or "any suit or proceeding had or commenced" before the passage of the act (p. 1204).

It is the rule for which there is an abundance of authority that the mere fact that a certain construction of a statute will cause inconvenience, or failure of justice, will not affect the judicial determination of a case involving its construction (p. 1111).

Every statute must be construed with reference to the object intended to be accomplished (p. 1110).

Vol. 25 of Cyc.

When the statute declares generally that no action, or no action of a certain class, shall be brought, except within a certain limited time after it shall have accrued, the language of the statute would naturally make it to apply to past actions as well as to those arising in the future (p. 994).

Except in cases of direct technical trusts, the statute of limitation operates as a bar, in equity as well as in law (p. 997).

In Volume 12, Am. & E. of Law, page 527, we find:

> "The enactment of expost facto laws either by Congress or the legislature of a state is expressly prohibited by the Federal Constitution,"

and in defining what an expost facto law is, on page 525, says:

> "An expost facto law is one which in its operation makes that criminal or penal which was not so at the time the action was performed."

And in Volume 24, page 577, we find:

> "An act retroactive in effect where there are no vested rights involved is not contrary to the principles of jurisprudence."

We contend that in the case at bar there are no vested rights. As to whether or not an injunction

—should have been granted in this case is a matter of doubt. To remove that doubt Congress enacted the Clayton Act. In Vol. 26, Am. & Eng. Enc. of Law, page 529, we find:

> "A declaratory statute is one which is passed in order to put an end to a doubt as to what is the common law, or the meaning of another statute, and which declares what it is and ever has been."

In the case of City of Cairo v. Cairo & V. R. R., a controversy arose over the use of the streets. An ordinance having been passed granting the railroad certain rights and privileges, the railroad claimed that the city could not by a subsequent ordinance restrict it in the use of such streets, but the Court said the city could do so.

In the case of Sturgis v. Carter, 114 U. S. 511, it would seem the State of Ohio made a change in its tax laws. The County Recorder, in order to determine whether or not a certain party had paid the rightful amount of taxes, sought to go back a period of four years. The contention was that the act was retroactive and contrary to the Constitution. The Court, however, held the County Recorder could do just what he was doing.

In the case of Wrightman v. Boone County, 88 Fed. 435, the question arose as to whether or not the act

should or should not have a retroactive effect. The Court, in passing on the question, said:

> "The intention of the Legislature in enacting a limitation law should apply, and in this case an examination of the law in question has left no doubt in our minds that the Legislature of Arkansas intended that this act should affect judgments rendered before as well as those rendered after its passage."

The Clayton Act has been passed upon in the Duplex case (252 Fed. 722) and in the Kinloch case (265 Fed. 312).

We feel that inasmuch as Congress enacted the law in question to settle the questions involved, the law was retroactive to the extent of applying to an injunction proceeding pending at the time, but not to a pending contempt proceeding.

What we wish this Court to say is, that an organization of working men, such as is the Tri-City Central Trades Council, is not an unlawful combination, and that in the event of a strike or lockout, workmen have the right to do peaceful picketing.

We submit that, inasmuch as the U. S. Circuit Court of Appeals has decided the issues involved, in accordance with justice and equity, such decision should stand as the judgment of this Court and the ruling made therein should be affirmed.

FRANK C. SMITH,
Solicitor for Respondent.

FILED
OCT 4 1921
JAMES D. MAHER,
CLERK

GENERAL NO. 25809. TERM NO. 8.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL *et al.*,
Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh District.

REVISED BRIEF AND ARGUMENT FOR PETITIONER

MAX PAM,
HARRY BOYD HURD,
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Solicitors for Petitioner.

MAX PAM,
Of Counsel.

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—oOo—

Statement of the Case.

—o—

The American Steel Foundries is a corporation organized under the laws of the State of New Jersey and authorized to transact business in the State of Illinois. For many years it has operated a plant at Granite City, Illinois. The plat introduced in evidence (Printed Rec., 22) shows that its property is fenced and covers in the neighborhood of twenty acres of ground. Within the enclosure are some eight or nine buildings of vari-

ous dimensions about 650 by 412 feet. The next largest building is approximately 225 feet by 425 feet. These buildings cover substantially one-third of the premises, are of various construction, some combustible and some non-combustible. The frame work of the buildings is wood in a great many cases and one is an entire wood building. (Printed Rec., 25-26.)

In normal times the plant employs about 1,600 men. It was operated as an "open shop," employing both union and non-union labor without discrimination. In November, 1913, because of depressed condition of business the plant closed and all employees were laid off indefinitely. On April 1, 1914, the petitioner undertook a partial resumption of operations at this plant, and a few men were employed at the plant to get it in running order. Prior to April 6, 1914, notices were posted about the works inviting workmen at a reduced scale of wages, in some departments from two to nine cents per hour, and in a good half of the departments without any reduction, and on April 6th the plant opened on a twenty-five per cent basis of its rate of capacity, employing from 300 to 375 men. On the resumption of work, such men were hired as applied for employment at the reduced wage, and about eighty or ninety per cent of the employees were men who had been in the employ of the plant when it closed the preceding November. (Printed Rec., 24, 25 and 41.) *From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to the petitioner from any of the employees with regard to wages.* (Printed Rec., pp. 25 and 41.)

About the 20th day of April, 1914, the Tri-City Central Trades Council sent a committee headed by Earl Galloway, its president, to the plant of petitioner to remonstrate with the management against the scale of wages then being paid. Upon their application for admission at the gate of the plant, one of the members, the president, Earl Galloway, was admitted to the office of Mr. Walcher, the manager of petitioner. *Mr. Walcher inquired of Galloway if any of the committee was an employee of the Company or represented any of the employees of the Company, to which Mr. Galloway replied that they did not.* Mr. Walcher stated that the visit of this committee was rather peculiar; *that he had never heard of any complaint from any of his employees, and was very much surprised.* He informed Mr. Galloway that they could have no dealings with outside committees, that they ran an open shop, that they did not recognize organized labor and merely dealt with their employees, and stated further that if any of the employees had any complaint to make in regard to wages or working conditions that he was willing to listen to them as often as may be necessary, and further stated that the Company ran an open shop for the last ten years, had never recognized labor unions and refused to deal with Galloway because he was representing labor organizations. (Printed Rec., 25.)

The Tri-City Central Trades Council is an organization composed of six delegates from local organizations, which form a central body. There are 37 affiliated bodies, composed of the building trades, carpenters, painters, plumbers, building laborers, plasterers, lathers, moulders, electricians, machinists, mill men, barbers, bar tenders,

clerks and various other trades. Each organization is entitled to six delegates. Earl Galloway, the president, testified that the object of the Council is to "better the condition of the working classes; make conditions so that they can receive more of the wealth they produce and better working conditions in general, and that his membership in the Council is by virtue of being a member of the Plumber's Union." (Printed Rec., 43.)

Promptly after the interview between Galloway and Walcher the manager of the petitioner, the respondents entered upon a conspiracy to force the petitioner to either operate its plants upon such terms as the respondent, the Tri-City Central Trades Council, should dictate or to close its plant.

In pursuance of such conspiracy, about the 22nd of April the Tri-City Central Trades Council declared a strike at the Plant, and circulated hand bills calling upon workmen and all labor to stay away from the plant as a strike was on. (Printed Rec., 43-44-45.)

The hand bill is as follows:

"UNION MEN
AND ALL LABOR
STAY AWAY
FROM THE
AMERICAN STEEL FOUNDRY
GRANITE CITY, ILL.
ALL TRADES ARE ON STRIKE.

For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.

By Order of Ways and Means.

Committee of Tri-City Central
Trades Council.

Endorsed by Tri-City Central Trades Council." (Printed Rec., 24.)

In response to this action but two men (Printed Rec., 41), Isaac Cook and Tom Churchill (of the 375 men employed) left their work (Printed Rec., 24) and these men left without even making a complaint to the manager (Printed Rec., 24), and left only because the strike was on and they were ordered out by the respondent, Tri-City Central Trades Council (Printed Rec., 53 and 56).

The "strike" of the Tri-City Central Trades Council having brought out only those two men, the Tri-City Central Trades Council, in furtherance of its conspiracy, proceeded on April 24, 1914, to place a body of pickets about the plant. These pickets were in a number of groups, usually consisting of three or four men, up to eight or ten men, in each group. (Printed Rec., 26.) This picketing failing to win the employees of the petitioner, the respondents to further carry out the unlawful conspiracy to force out the petitioner's men and close down its plant, entered upon a persistent course of intimidation and assaults upon the petitioner's employees, and threatened to destroy the property if necessary to accomplish their end. (Printed Rec., 24.) The assaults were numerous, were wanting in provocation and were brutal, and finally culminated in a general riot brought on by about 200 men, consisting of the pickets placed around petitioner's plant and those associated with them, and among whom were

recognized Earl Galloway, the president of the Council, and others of the respondents. (Printed Rec., 29.)

Written application for protection was made by the petitioner to the Mayor of the City. (Printed Rec., 24.) The Mayor promised protection, but failed to furnish it. (Printed Rec., 47.) The Mayor was a witness on behalf of the respondent Trades Council, and testified that he was a member of the Socialist party, and elected on that ticket as Mayor of the city; that prior to his election he was a steel worker in a steel mill for about ten years, and at the present time held an honorary membership in the Amalgamated Iron, Steel and Tin Workers, and that his sympathies were with the respondents. (Printed Rec., 47.) Application for protection was also made by the petitioner to the Sheriff of the County (Printed Rec., 24); the Sheriff promised to investigate, but neither offered nor gave protection. (Printed Rec., 49.)

On May 18th, 1914, the petitioner's bill of complaint was filed in the United States District Court for the Southern District of Illinois, and application made for a restraining order. (Printed Rec., 2, 9.)

The bill stated, among other things, that the respondents combined and conspired to prevent petitioner from employing skilled laborers at its plant, and that such skilled laborers and petitioner had agreed upon terms of employment mutually agreeable and satisfactory. That in carrying out such combinations and conspiracy the respondents began picketing the plant of the petitioner on or about April 23rd, 1914, that the respondents on April 23rd and since then had

caused various numbers of men or pickets, namely 5 to 30, to be stationed adjacent to the main gates of the petitioner's plant, which pickets, from that time until the time of the filing of the bill, had threatened to assault, mistreat and injure various of the employees of the petitioner unless said employees ceased from their work, and caused a number of the petitioner's employees to be assaulted by the pickets, to be knocked down and kicked, and rendered insensible, and threatened to kill the employees who continued to work at the plant of the petitioner. That on the 13th day of May, 1914, the respondents in combination caused a gang of men in excess of 50 in number to assault nine of the employees of the petitioner as they were leaving the plant, each of which said employees so assaulted was satisfied and contented with his employment and with the petitioner, and that no dispute of any kind existed between the employees and the petitioner. That the Tri-City Central Trades Council had caused to be circulated generally throughout the said City of Granite City, hand bills and posters, as aforesaid, ordering all labor to stay away from the plant of petitioner. That the respondent combining and conspiring as aforesaid, induced and caused irresponsible men, whose names are unknown, to come from the State of Missouri to picket the the plant and engage in said acts of violence and that most of said men so coming from the State of Missouri, after committing assault on the employees of the petitioner, immediately thereafter left the State of Illinois and other men were thereupon caused to come from the State of Missouri to the vicinity of the said plant of the petitioner by the respondents, to likewise take part in the

intimidation and threats and acts of violence towards the said employees of the petitioner. That the respondents caused threats to be circulated and threats had been carried to the petitioner that if the respondents did not accomplish their purpose by intimidation and acts of violence, that the respondents would cause the plant of the petitioner at Granite City to be destroyed or burned. (Printed Rec., 4-5.)

The restraining order was issued on the morning of the 13th day of May, 1914 (Printed Rec., 10), and the Marshal went to Granite City that evening to serve it. After the issuance of the restraining order, and just prior to the arrival of the Marshal, a number of pickets assaulted, without provocation, two other employees of the plant, and left them lying unconscious upon the walk. (Printed Rec., 27.) From the time the restraining order was served until now, the plant has operated without any trouble, and has had an abundance of capable and efficient workmen to conduct its operations. (Printed Rec., 23 and 41.)

Answers were filed (Printed Rec., 15) by the respondents to the petitioner's bill for injunction, and on June 8, 1914, the District Court proceeded to final hearing upon the pleadings and the evidence offered in open court. (Printed Rec., 20.) Thirty-four witnesses were sworn and testified orally. Documentary and record evidence was offered by both parties. At the close of the testimony the case was decided by the Presiding Judge (Humphrey), (whose opinion appears at page 62, Printed Rec.) On June 9, 1914, a final decree containing permanent injunction was entered. (Printed Rec., 66.)

The form of the injunction as entered by the District Court is as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Issac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the

said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employes, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

From the final decree an appeal was prosecuted to the United States Circuit Court of Appeals for the Seventh Circuit. The appeal was argued on January 26, 1915, a re-argument was ordered on May 23, 1916, and on December 6, 1916, an opinion was filed (Printed Rec., 87) reversing the decree of the District Court, with direction to modify the same in accordance with the views expressed in the opinion. The suggested modification is as follows:

"In so far as the decree restrains all picketing and all persuasion and all interference

> with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this court for the modification of the decree in the Allis-Chalmers case will afford sufficient and proper guidance for the modification of the decree herein."

The Court of Appeals having failed to definitely fix the form of modification, we must have reference to the opinion and order in Iron Moulders' Union *v.* Allis-Chalmers Company, 166 Fed. 45, for more definite information on the subject. The modification in Iron Moulders' Union *v.* Allis-Chalmers Company, *supra*, apparently adopted by the Circuit Court of Appeals in the instant case substantially eliminated from the final decree any injunction against persuasion, against picketing and against interference with the lawful conduct of the business of the petitioner unless such persuasion, picketing and interference are accompanied by intimidation, force and assault.

The bill for injunction was not a bill to restrain the organization of a Union; it was not to restrain any employee from abandoning his employment; it was not a bill to keep the peace; it was not a bill simply to enjoin a mob and mob violence. Neither the right of any laborer or any number of laborers employed by the petitioner to quit work was challenged, nor was the right of any employee of the petitioner to strike and abandon his work involved. The scope and purpose of the bill was to restrain an unlawful combination and conspiracy of and amongst the respondents, none of whom were employees of the petitioner, nor

representatives of the petitioner's employees, nor authorized by the employees to represent and speak for them, from interfering with the petitioner in the operation of its plant and from interfering with its employees in their right to work for the petitioner and discharge their contract obligations to the petitioner.

The bill here was to enjoin meddlers and strangers to the petitioner from carrying out a conspiracy to force and compel the employees of the petitioner to strike, when the employees themselves would not and did not strike; to force and compel the employees of the petitioner to leave their employment and violate their contracts of employment with the petitioner, when the employees themselves did not desire to leave their employment and did not desire to violate their contracts of employment; and to close down the plant of the petitioner unless the demands of these interlopers and strangers for a change of wages, then satisfactory to the employees, were granted, the employees themselves being satisfied with the wages being paid them and not asking any change.

BRIEF.

I.

Petitioner's bill of complaint is based upon the criminal statutes of Illinois and upon the decisions of the Supreme Court of the State of Illinois and which constitute the rule in Illinois and should control the decision in this case.

The statutes applicable to this case are:

Section 46, Chapter 38, Criminal Code:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * business or employment or property of another * * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2000., or both."

Section 158, Chapter 38:

> "If any two or more persons shall combine for the purpose of depriving the owner or possessor of property of its lawful use and management, or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500. or confined in the county jail not exceeding six months."

Section 159, Chapter 38:

> "If any person shall, by threat, intimidation or unlawful interference, seek to prevent any other person from working or from

obtaining work at any lawful business, on any terms that he may see fit, such person so offending shall be fined not exceeding $200."

The decisions of the Supreme Court of Illinois principally relied on are as follows:

Doremus *v.* Hennessey, 176 Ill. 608.
O'Brien *v.* People, 216 Ill.
Purington *v.* Hinchliff, 219 Ill., 159.
Franklin Union *v.* People, 220 Ill., 355.
Barnes *v.* Typographical Union, 232 Ill., 425.
Philip Henrici Co. *v.* Alexander, 198 Ill. Appellate, 568.

II.

Kemp *v.* Division No. 241 Ass'n, 255 Ill., 213, does not modify the Illinois rule contended for by petitioner.

III.

Iron Moulders Union *v.* Allis-Chalmers Co., 166 Fed. Rep., 45, is not applicable or authority in this case.

IV.

Under the decisions of this Court the rule in Illinois should control the decision here.

Burgess *v.* Seligman, 107 U. S., 20.
Bucher *v.* Cheshire Railroad Co., 125 U. S., 555.
Gormley *v.* Clark, 134 U. S., 338.

V.

The rule in Illinois followed by courts in other states and jurisdictions:

Atchison, Topeka & Santa Fe *v.* Gee, 139 Fed. Rep., 582.

Beck *v.* Railway Teamster's Protective Union, 77 N. W., 13.

Gompers *v.* Bucks Stove & R. Co., 221 U. S., 418.

Jones, et al., *v.* Van Winkle Gin & Machine Works, 131 Ga., 336 (62 S. E., 237).

Sailors Union *v.* Hammond Lumber Co., 156 Fed. Rep., 450.

Stephens *v.* Ohio State Telephone Co., 240 Fed. Rep., 759.

Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., 263 Fed. Rep., 192.

Kinloch Telephone Co. *v.* Local Union No. 2, etc., 265 Fed. Rep., 312.

VI.

The law as laid down in Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S., 229, is decisive of the instant case.

VII.

The law as announced in the Hitchman case is supported in other states and jurisdictions.

Old Dominion Steamship Co. *v.* McKenna, 3 Fed. Rep., 48.

United States *v.* Haggerty, 116 Fed., 510 (C. C. W. Va., 1902).

Casey *v.* Cincinnati Typographical Union No. 3, 45 Fed. Rep., 135 (C. C. Ohio, 1891).

State *v.* Glidden, 8 Atl. Rep., 890 (Conn., 1887).

Jersey City Printing Co. *v.* Vassidy, 53 Atl. Rep., 230 (N. J., 1902).

Frank *v.* Herold, 63 N. J. Eq., 443; 52 Atl., 152, 1901.

Flaccus *v.* Smith, 199 Pa., 128.

And also in Eagle Glass Mfg. Co. *v.* Rowe, 245 U. S., 275.

VIII.

Bludgeon and brutality the form of respondents' picketing.

IX.

The "Clayton Act" is not applicable nor available against petitioner.

(a) The Final Decree of the District Court of the United States was entered June 9, 1914, and the "Clayton Act" became law October 15, 1914. That Act cannot be made retroactively applicable to the instant case.

State of Pennsylvania *v.* Wheeling Bridge Co., 59 U. S., 421.

Edwards *v.* Kearzey, 96 U. S., 293.

Memphis *v.* U. S., 97 U. S., 293.

Fishers Negros *v.* Dabbs, 6 Yerg. Tenn., 119.

Livingston *v.* Livingston, 173 N. Y., 377.

Humphrey *v.* Gerard, 83 Conn., 346.

Paine Lumber Co. *v.* Neal, 244 U. S., 459.

(b) The "Clayton Act" not available because inapplicable to the facts in the instant case.

Stephens *v.* Ohio State Telephone Co., *Supra.*
Montgomery *v.* Pacific Electric Railway Co., *Supra.*
Dail-Overland *v.* Willys-Overland, *Supra.*
Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., *Supra.*
Kinloch Telephone Co. *v.* Local Union No. 2, etc., *Supra.*
Langenberg Hat Co. *v.* United Cloth Hat & Cap, etc., *Supra.*
King *v.* Weiss & Lesh Mfg. Co., *Supra.*
Davis *v.* Henry, *Supra.*

X.

Under the decisions of this court the "Clayton Act" is inapplicable and unavailable in the instant case.

Paine Lumber Co. *v.* Neal, 244 U. S., 459.
Duplex Printing Press Co. *v.* Deering, 254 U. S. 443.

XI.

Errors in respondent's statements and quotations of the evidence.

Argument.

The petitioner in its bill of complaint and at the hearing contended and proved that the respondents entered into a combination and conspiracy to injure and interfere with the property and the business of the petitioner. There was no dispute in the facts on that issue. The respondents admitted calling the strike and its purpose. The District Judge, who saw the witnesses testify, and heard the evidence submitted, found, as matter of fact, that the charge of combination and conspiracy was proved and sustained. He said in his opinion (Printed Rec., 64),

> "The proof here sustains the averments of the bill as to the illegal combinations; such a combination can not have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be *violent or peaceful*". (Italics ours.)

The bill was bottomed not only upon the common law right of petitioner to enjoin and restrain the prosecution of a combination and conspiracy to injure, interrupt and interfere with its business, its property and property rights, but specifically upon sections 46, 158 and 159, Chapter 38 of the Criminal Code of the State of Illinois, which in terms provide and hold that the acts of the respondents, alleged and proved, constitute a criminal conspiracy.

The Combination and Conspiracy.

The District Judge made his findings on the facts with reference to such conspiracy. See his opinion (Printed Rec., 62) as follows:

"This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trades of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests; viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for the hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one

he wants to make. We wouldn't be a republic if we did that. We would not be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presuppose that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law and there is no other view to take of it. *This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it.*" (Printed Rec., 62.)

Earl Galloway, the president of the Tri-City Central Trades Council, testified that around the 20th or 21st of April he told Mr. Walcher, superintendent of the petitioner's plant, that he and his committee represented labor organizations, and in answer to an inquiry of Mr. Walcher if he and the Committee were employees of the petitioner said that "they were not at the present time, that there had been, *but they were representatives of the different local unions.*" He testified further that immediately after such meeting *he reported back to the Joint Board and a strike was declared on the plant. "Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts something like 8 or 10 cents, I believe.*" (Printed Rec., 41.)

The hand bills read as shown hereinabove at page 4:

"UNION MEN
AND ALL LABOR
STAY AWAY
FROM THE
AMERICAN STEEL FOUNDRY
GRANITE CITY, ILL.
ALL TRADES ARE ON STRIKE

For a restoration of the scale of wages that was in force when the foundry closed, the company having reduced wages from 2 to 10 cents per hour when work was resumed recently.

By Order of Ways and Means
Committee of Tri-City Central
Trades Council.
Endorsed by Tri-City Central Trades Council." (Printed Rec., 24.)

He further testified (Printed Rec., 45),

"On the seven or eight occasions I was down there (at the plant of the petitioner) I went down to see how things were going and *went down to see that things were going right.* These pickets were stationed adjacent to Neidringhaus Avenue around the Depot. That is one of the main streets leading from the plant."

Another of the respondents, B. F. Lamb, stated to Oscar E. Hall, as shown in Mr. Hall's testimony (Printed Rec., 39) as follows:

"About the 24th or 25th of April I had a conversation with the defendant Lamb, he said to me, 'We don't like the way you have treated our boys down here and we just came

> down to raise a little hell.' Just before he said this he was with a party of five or six men."

This was not challenged or contradicted by Lamb, though he testified at the hearing.

The respondent Lamb testified (Printed Rec., 48),

> "Prior to the strike some of the men in my organization were employed at the plant, we called them out after the strike had been declared."

He also testified (Printed Rec., 47) that his business is representing the Union National Association of Machinists.

W. J. Hartbeck, a witness called by the respondents, testified (Printed Rec., 51),

> "When the reduction of wages took effect, *I was ordered by the superior of our district board to go over there, and to have men over there that would go to work to try to have them come out, if they could under reduction of wages;* probably some of our union men would go in unbeknowns of the trouble. At the time I went over there none of our men were at work in the plant because they had been sent for. But I went over anyway."

The unlawful purpose stands admitted and proved, and one of the respondents on cross-examination boldly testified (Printed Rec., 56):

> "I wanted to get all the men out of the plant. *I wanted to quit work and didn't want anybody else to work in my place. I knew if they didn't have men to fill my position the plant couldn't run and I was trying to keep them from getting men to fill those positions. I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade the man not to take the places of the strikers the Com-*

pany would restore the wages. I was trying to make them restore the wages or close down the plant.''

Counsel for respondents in the brief filed in this case in response to the petition for certiorari freely states on page 35:

''And, in this case had the petitioner agreed to arbitration there would have been no strike; there would have been no conflict between strike-breakers and others, and there would have been no cause for the ill feeling that was later engendered. And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.''

The evidence of conspiracy is clear. There can be no dispute in that regard. The Judge of the District Court saw and heard the witnesses as they testified, and his opinion and decision under the circumstances should be persuasive, indeed conclusive, on the facts.

Execution of Combination and Conspiracy.

NONE OF THE RESPONDENTS WAS IN THE EMPLOY OF THE PETITIONER OR AUTHORIZED TO SPEAK OR ACT FOR THE EMPLOYEES, BUT WERE GRATUITOUS INTRUDERS AND INTERLOPERS.

The respondent sought to carry out the conspiracy and combination by calling and seeking to force a ''strike'' at the plant of the petitioner and an abandonment of employment by the petitioner's employees, and to this end used and employed intimidation, violence, assaults and threats to destroy petitioner's property through pickets selected and appointed by the Central Trades Council.

So far as the record discloses petitioner's employees had never made any complaint or had any

controversy with the petitioner, either as to wages, terms or conditions of employment; the employees neither had nor ever expressed to the petitioner any grievance of any kind; the relationship between the petitioner and its employees was one of harmony and full accord; there was neither dissatisfaction or discontent on the part of the employees as to their relationship and their employment with the petitioner. Indeed, the record fully demonstrates and the evidence indisputably proves, the employees did not initiate or cause a strike at the petitioner's plant; did not leave their employment or seek to terminate the relationship of employment between themselves and the petitioner. The employees did not meet or discuss amongst themselves, or with any other persons, the subject matter of wages, terms or conditions of employment in any way whatsoever, nor is there any evidence anywhere in the record that the employees of petitioner authorized or directed the Tri-City Central Trades Council, or its officers, or any committee of its appointment, to discuss with the petitioner the question of wages, terms or conditions of employment, or to initiate a strike at the petitioner's plant. On the contrary, the action of the Tri-City Central Trades Council and its officers and its self-created committee gratuitously and without previous authority from the employees of the petitioner, sought to force the petitioner to change its scale of wages, which then was satisfactory to the employees, and failing in its effort in that regard, gratuitously, and without previous authority of the employees of the petitioner, initiated and caused a strike to be called at the plant of the petitioner and caused hand bills and printed notices of such unauthorized strike to be posted and circulated without any previous authority from the employees of the petitioner.

These methods for initiating and causing a cessation of employment of the employees of the petitioner not being successful, the Tri-City Central Trades Council and its officers and its self-appointed Committee undertook to accomplish its unlawful combination and conspiracy by picketing the plant and premises of the petitioner, and through such picketing engaged in threats, intimidation, violence, assault and other forms of lawlessness, with bludgeon and brutality; and interrupted and interfered with the business and property and property rights of the petitioner and its employees and their contracts of employment with the petitioner.

While here and there some one of the respondents sought to place a different construction upon the cause and character of the assaults, nevertheless the fact, and the evidence supporting the fact, remains practically undisputed, and upon this point the District Judge made his finding, as shown in his opinion (Printed Rec., 64), as follows:

> "The proof here sustains the averments of the bill as to the illegal combinations; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful.
>
> However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the condition under which he is working; talk to him about the strike, talk to

him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There can be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you." (Printed Rec., 64.)

And the Circuit Court of Appeals on this point says (Printed Rec., 89):

"Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which, if carried out, would have resulted in the destruction of property. The District Judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts." (See Printed Rec., 89, 90.)

Although we contend any form of picketing—even peaceful and unthreatening—was not permissible and was properly restrained by the District Judge, we shall later herein call attention to the evidence of the picketing practiced, which makes the expression of the Circuit Court of Appeals, though sustaining the District Judge, a colorless finding upon indisputable evidence of brutality and lawlessness.

Tri-City Central Trades Council, stranger and intruder, combined and conspired to injure petitioner.

So far as the record discloses, none of the employees of the petitioner were members of the Tri-City Central Trades Council. The Central Trades Council was composed of trade unions. The record does not disclose membership of the employees of the petitioner in any of the trades unions embraced within the Central Trades Council, excepting one, namely Churchill, who was a member of the Machinists Union, though not a member of the Central Trades Council. Cook had never been a member of any union and was not a member of the Central Trades Council. Earl Galloway, the president of the Central Trades Council, did not claim to Mr. Walcher at the time he appeared at the plant and sought to discuss the matter of wages of the employees of the petitioner, that he represented any men who were then in the petitioner's employ, nor did he state or claim at that time, or at any other time, that the Trades Council or the officers thereof, or the self-appointed committee, had been authorized by the employees of the petitioner, in meeting or out of meeting, to represent them in any respect concerning their relationship and employment with the petitioner or the wages paid.

The Circuit Court of Appeals, however, without justification in the record and without evidence to warrant it, said (Printed Rec., 93):

> "Among the defendants in this case there were some former employes. Many of the plaintiff's employes at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest. Under these circumstances it cannot be said that the labor organization was an intermeddler or that its course was contrary to the wishes of its members or the wishes of the plaintiff's employes."

In view of this statement in the opinion of the Circuit Court of Appeals, we feel constrained to call this court's attention to all the evidence in the record on this subject:

Mr. Walcher, the manager of petitioner, testified (Printed Rec., 24):

> "At no time between April 1, 1914, and the time the restraining order was issued was either the defendants McKenny, Galloway, Thornberg (William), Holmes, C. Thornberg, Burton, Roach, Aldridge, Lamb, Ishman, McDonough or Gerlich in the employ of the American Steel Foundries. The defendants Cook and Churchill were the only ones in our employ during that time."

Printed Rec., 40:

> "Question by the Court: If men were unmolested would you have any trouble filling all the places you want?
>
> "A. I think not.
>
> "Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none."

* * * * * *

Printed Rec., 41:

> "Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from any one in our employ."
>
> "When we closed in November all our employees were discharged; they were laid off indefinitely on account of closing down the plant. When we opened April the 6th we employed whoever we saw fit; whoever applied for employment at the gate. Started the plant the same as a new plant. We only had called for in round numbers, three hundred men, and laid off approximately thirteen hundred men. Eighty or ninety per cent of the employees were old men. I assume these men were members of various organizations; I can't state definitely as to that."

Earl Galloway, president of Tri-City Central Trades Council, testified (Printed Rec., 45):

> "I am a plumber and was never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there."

B. F. Lamb testified (Printed Rec., 47):

> "My business is representing the Union National Association of Machinists; I am a machinist by trade. I live in St. Louis. The Tri-City Central Trade Council is in my district, therefore I am in Granite City quite often; I have a local there and they are affiliated with the Council."

Printed Rec., 48:

> "I never worked for the American Steel Foundries."

W. J. Hartbeck testified (Printed Rec., 50):

"I live at St. Louis, am a blacksmith, a member of the blacksmiths' union and have no connection with the Central Trades Council of Granite City."

Printed Rec., 51:

"I never worked for the American Steel Foundries."

Harry McKenny testified (Printed Rec., 51):

"I live in Granite City and am a steam fitter and belong to one of these unions."

Printed Rec., 52:

"I am a steam fitter and did not work for the complainant in April and May, 1914. I did work for them in 1907, but quit because I was ordered to help a machinist that wasn't a union man."

Thomas Churchill testified (Printed Rec., 52):

"I am a machinist. I was working for the plant when it closed down in November and went back to work when they opened but got an increase over the new men they had, but still it was a reduction at the same time. I am connected with the machinist's labor union, am a member."

Printed Rec., 53:

"At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had to take at the time being and I haven't had anything better since. I didn't get a better job. *I quit because these fellows asked me to go out.*"

Ted Ishman testified (Printed Rec., 54):

"I am a craneman and reside at Granite City, a member of the cranesmen's union affiliated with the Tri-City Central Trades Council."

Printed Rec., 54:

"I was not working at the plant this spring after it resumed operations."

Clay Holmes testified (Printed Rec., 55):

"I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

C. E. Gerlich testified (Printed Rec., 55):

"I am a machinist residing in St. Louis. I worked for the complainant but haven't for two years. I belong to the machinists' union. I work at the Commonwealth plant, about two blocks away from this plant."

Isaac Cook testified (Printed Rec., 56):

"I am an electrician and belong to none of the unions. I worked at the plant about three weeks after it started up."

* * * * * * * *

"I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, and *I quit because they said there was a strike on.*"

C. L. Burton testified (Printed Rec., 57):

"I reside at Granite City, an Alderman of the Fifth Ward. I work at the Madison Car

Shops. In April and May I was working at the Laclede Steel Plant in Madison. I never worked for the Steel Foundries."

Edward Wade testified (Printed Rec., 58):

"I am a sewer man or plumber's laborer. I am Treasurer of the Central Trades Council."

E. H. Taylor testified (Printed Rec., 59):

"I am an electrician, a member of their union and of the Central Trades Council. I am on the board of trustees of the Council."

* * * * * * * *

"I was not working for the American Steel Foundries."

Ed Roach testified (Printed Rec., 59):

"I am a machinist, a member of their union and reside in East St. Louis."

* * * * * * *

"I haven't worked for the foundries since a year ago this month."

T. M. Cavanaugh testified (Printed Rec., 57 and 58):

"At the regular meeting on April 15th of the Tri-City Central Trades Council a communication was received from the Machinists' Union requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday, the 19th."

* * * * * * * *

"On April 15th we had a communication from the unions representing some of the trades working at the Foundries. *We had complaints from the men themselves working at the foundry. I couldn't state their names.*

I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

We have quoted from the evidence of all the witnesses in the case, respondent or otherwise, and the court will observe that *no member of the Trades Council was working for or was an employee of the petitioner at the time in question.* The only two employees of the petitioner, as we have above shown, who quit because of the interference by the respondent, Trades Council, were Cook, who was *not* a member of the Trades Council nor a member of any union, and Churchill, who was not a member of the Trades Council, but claimed to be a member of a machinists' union. The testimony of Cavanaugh does not support the statement in the opinion of the Circuit Court of Appeals that *"many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council."*

Cavanaugh testifies that they had complaints from the men themselves working at the foundry; that he couldn't state their names, nor state the name of any employee who made any complaint. Surely this testimony of Cavanaugh cannot be construed into proof sustaining the statement of the Circuit Court of Appeals just quoted. We repeat there is no evidence in this record that any of the employees of the petitioner except one, Churchill, was a member even of any union. The record is barren of any connection or relationship between the Tri-City Central Trades Council and the petitioner, or its employes.

Even Earl Galloway, the president of the Trades Council, with reference to the meeting with petitioner's manager before *it called the strike* testified as follows (Printed Rec., page 44):

> "A Committee was appointed by the Central body to wait upon this corporation to arbitrate the question. I forget all of the Committee; they were ten and I was one of them. We went to the plant and the gate man informed me the spokesman or chairman would be permitted to enter. As chairman I went in to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; *he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions;* he stated that he would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievance to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back.
>
> "This was about the 20th or 21st of April. *It was reported back to the joint board and a strike was declared on the plant.* Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts, I believe."

Walcher, the manager of petitioner's plant, testified, as above quoted (Printed Rec., 41):

> "Earl Galloway was admitted to my office and told me there was a Committee that represented the labor organizations; *I asked him if the Committee represented our employees and he said they did not*, and I told him we didn't

> recognize any labor organizations; we had never had any complaints or demands from any of our employees."

The court will note not only that the statement of the Circuit Court of Appeals above quoted is unsupported by the evidence in the record, but is in the very teeth of the testimony, which conclusively and indisputably refutes that statement. And it appears clearly and conclusively that the employees of the petitioner did not strike; that the employees of petitioner did not complain, either of wages or of conditions; that the employees of petitioner did not express dissatisfaction or discontent; that the employees of petitioner did not interfere with the operation of the petitioner's plant or leave its employ, but that, *the Tri-City Central Trades Council and its officers, total strangers to the petitioner, "struck" the plant.* The Tri-City Central Trades Council, not representing the petitioner's employees nor even claiming to represent them, sought not only to coerce the petitioner into a change of the terms of contract between itself and its employees without knowledge or action on the part of the employees, but even sought to coerce the employees and workers themselves to violate their contracts with their employer; terminate their relationship with their employer; leave the employment of their employer, and cause a strike at the plant; and, purely as a gratuitous meddler and interloper secure a wage which the employees themselves did not seek; and, if their end could not be attained in any other way, resort to intimidation, violence, assault and, if necessary, destruction of petitioner's property. (See Printed Rec., 24.)

I.

The Statutes and Decisions of the Supreme Court of Illinois Should Prevail.

The Circuit Court of Appeals rested its decision upon Iron Moulders' Union *v.* Allis Chalmers Company, supra, and the cases there cited which in the pleadings and facts are entirely different from those in the instant case; and entirely ignored the fact that the bill filed here is bottomed upon the provisions of the Criminal Code of the State of Illinois and upon the principles of law applicable to the facts, as pronounced by the Supreme Court of Illinois, establishing the rule in Illinois with respect to the subject-matter of conspiracy, picketing and persuasion.

The sections of the Criminal Code referred to are:

Section 46, Chap. 38, entitled "Criminal Code" of the State of Illinois, which reads as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * *business or employment or property of another* * * * they shall be deemed guilty of conspiracy; and every such offender * * * and every person convicted of conspriacy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000, or both."

Section 158 of the same chapter, reading:

> "If any two or more persons shall combine *for the purpose of depriving the owner or possessor of property of its lawful use and management*, or of preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the

parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."

And Section 159 of the same chapter, as follows:

"If any person shall, by threat, intimidation or unlawful interference seek to prevent any other person from working or from obtaining work at any lawful business, on any terms that he may see fit, such person so offending shall be fined not exceeding $200."

The court will please remember the quotation from the opinion of District Judge Humphrey (Printed Rec., 62-63):

"This bill is brought upon a theory different from most of the bills in the books. *This bill charges a combination, a conspiracy.* The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful."

The law of Illinois applicable to the facts in this case is well settled.

The Supreme Court of Illinois in an unbroken line of decisions has held the acts complained of to be unlawful and to constitute an unlawful combination and conspiracy which may be enjoined by Courts of Equity.

In the leading case of Barnes *v.* Typographical Union, 232 Ill. 425, Justice Cartwright says, at page 431:

"It is clear that the union and its members were not in competition with the complainant in respect to labor or anything else. *The members of the union had left the service of the complainants, and their only purpose was to prevent the complainant from carrying on their business. They were endeavoring to compel the complainants to submit to their dictation by depriving the complainants of*

their legal right to employ such laborers as they might choose. If there is a combination to injure a person because he refuses to comply with some demand where he has a legal right to refuse, there is no way of classifying such acts in furtherance of such purpose as competition. The acts alleged in the bill were directed primarily against the complainants for the purpose of doing them harm, and that sort of action is not lawful competition.

"The whole scheme as set out in the bill was to injure the complainants for the purpose of compelling them to yield to the union their absolute legal right to manage their own business in their own way * * **it follows that any interference with that right whether by threats or intimidation or by persuasion accompanied by actual malice is a legal wrong.*"

At page 434 the Court further says:

"The facts stated in the bill authorized an injunction to prevent carrying out the scheme of the defendants.

"It is next contended that if any injunction was authorized, the injunction granted was too broad in *enjoining appellants from peaceful picketing of complainants' premises and from congregating about or near their places of business for the purpose of inducing or soliciting employees to leave the employment. It is contended that a peaceful picket line around a shop is entirely lawful.* But this court has held otherwise in Franklin Union *v.* People, *supra,* where endorsement was given to the doctrine of Beck *v.* Railway Teamsters' Protective Union, 118 Mich., 407, by quoting therefrom, as follows: 'To picket complainants' premises in order to intercept their teamsters or persons going there to trade is unlawful. It, itself, is an act of intimidation and an unwarrantable interference with the right of free trade. The highways and public streets must be free to all for the purposes of trade, commerce and labor. The law protects the buyer, the seller, the merchant, the manufacturer and the laborer in

the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done ten or ten hundred feet away.' The court also gave its approval to the decision in Vegelahn *v.* Guntner, 167 Mass., 92. In that case a patrol of two men in front of the plaintiff's factory, maintained as one of the means of carrying out the defendants' plan, was held to be an unlawful interference with the rights of the employer and the employed. The patroling or picketing of the premises was considered to have elements of intimidation, and the court decided that the motive of obtaining better wages for themselves on the part of the defendants did not justify maintaining a patrol in front of the complainant's premises as a means of carrying out their conspiracy. The very fact of establishing a picket line is evidence of an intention to annoy, embarrass and intimidate, whether physical violence is resorted to or not. There have been a few cases where it was held that picketing, by a labor union, of a place of business is not necessarily unlawful if the pickets are peaceful and well behaved, but if the watching and besetting of the workmen is carried to such a length as to constitute an annoyance to them or their employer it becomes unlawful. But manifestly that is not a safe rule and furnishes no fixed or certain standard of what is lawful or unlawful. Any picket line must result in annoyance both to the employer and the workmen, no matter what is said or done, and to say that the court is to determine by the degree of annoyance, whether it shall be stopped or not would furnish no guide, but leave the question to the individual notions or bias of the particular Judge. To picket the complainants' premises was in itself an act of intimidation and an unwarrantable interference with their rights. Pickets were, in fact, guilty of actual intimidation and threats, but if they had not been, the complainants

were entitled to be protected from the annoyance.

"Another supposed right of the defendants asserted by counsel is the exercise of the power of persuasion, and it must be conceded that argument and persuasion are lawful if not directed to the accomplishment of an illegal and unlawful purpose. The object of the defendants as set forth in the bill was illegal, and if there is a malevolent intent to produce an illegal result, and it is produced, it makes no difference whether it is accomplished by mere persuasion or by physical violence (Curren *v.* Galen, 152 N. Y., 33)."

In the case of O'Brien *v.* People, 216 Ill., the Court said at p. 371:

"The law is well settled that every person shall be protected in the right to enter into contracts or in refusing to do so, as he shall deem best for the advancement of his own interests, without interference by others. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, and any attempt to compel an individual, firm or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees is not only unlawful and actionable, but is an interference with the exercise of the highest civil right."

In the case of Doremus *v.* Hennessey, 176 Ill. 608, on page 614, it was said:

"The common law seeks to protect every person against the wrongful acts of others, whether committed alone or by combination, and an action may be had for injuries done which cause another loss in the enjoyment of any right or privilege of property. No persons, individually or by combination, have the right to directly or indirectly interfere or disturb another in his lawful business or

> occupation, or to threaten to do so, for the sake of compelling him to do some act which, in his judgment, his own interest does not require. * * * It is clear that it is unlawful and actionable for one man from unlawful motives to interfere with another's trade by fraud, misrepresentation, or by molesting his customers, or those who would be customers, or by preventing others from working for him or causing them to leave his employ by fraud or misrepresentation, or physical or moral intimidation, or persuasion, with an intent to inflict an injury which causes loss. * * * Every man has a right, under the law, as between himself and others, to full freedom in disposing of his own labor or capital according to his own will, and anyone who invades that right without lawful cause or justification commits a legal wrong, and, if followed by an injury caused in consequence thereof, the one whose right is thus invaded has a legal ground of action for such wrong."

In Purington *v.* Hinchliff, 219 Ill. 159, on pages 166 and 167, the Court said:

> "The question of unlawful conspiracy to injure the business of another, and the necessary elements to constitute it, has been before this court on other occasions. Our reports contain many well considered cases on the subject. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, and any loss wilfully caused by such interference will give the party injured a right of action for all damages sustained. All parties to a conspiracy to ruin the business of another because of his refusal to do some act against his will or judgment are liable for all overt acts illegally done pursuant to such conspiracy and for the subsequent loss, whether they were active participants or not."

Under the decision of the Supreme Court of Illinois, the acts alleged and proved establish a combination and conspiracy within the provisions of the criminal statutes above cited and quoted. The plant, property and business of the petitioner were located and used and operated in the State of Illinois. The acts complained of were committed in Illinois. The petitioner was entitled to protection of its property and its operations provided for by the laws of Illinois and the adjudications of its Supreme Court. The rule of law as established by the statutes and the Supreme Court decisions of Illinois should prevail and control, and the Federal Courts as a matter of law and comity are bound to follow the rule of law so established by the Illinois statutes and Supreme Court decisions.

II.

Kemp v. Division No. 241 Ass'n, 255 Illinois, 213, does not modify the Illinois rule contended for by petitioner.

To overcome the petitioner's contention that the Illinois rule, as expressed in Barnes *v.* Typographical Union, *supra,* and the other cases cited, should obtain and be followed in the instant case, counsel for respondents in his reply cited the case of Kemp *v.* Division No. 241 Ass'n., 255 Ill. 213.

A reading of the majority opinions in that case will demonstrate that the case did not nor was it intended to modify or overrule Barnes *v.* Typographical Union, *supra;* also that it does not bear upon the question involved here. The purpose of the bill in that case as stated by the Court there, page 2, was as follows:

> "The only reasonable conclusion to be deduced from the allegations and prayer of the

> bill is that appellees by this proceeding seek to restrain the union and its officers from calling a strike of its members, the obvious purpose of the injunction sought being to prevent the union employees of the Railways Company from quitting their employment *in accordance with the vote previously taken, by which those employees as members of the union declared that they would cease to work with men* who, after receiving benefits through their organization, refused to continue members. * * * The question presented for our determination, therefore, is whether a court of equity is authorized upon application by the non-union employees to restrain the union and its officers from calling a strike of the union employees *in accordance with the vote previously taken by the union employees as members of the union, where the* purpose of the proposed strike is to compel the employer to discharge non-union employees who are engaged in the same class of work."

The Court will note that the question of whether or not there should be a strike was submitted to and voted upon by the union employees of the Railways Company, and that representations or action of the organization in dealing with the Railways Company *was upon the express authority conferred by the vote of the employees.*

The case at bar presents no such situation. The Tri-City Central Trades Council arrogated to itself the prerogative and privilege to demand from petitioner a change in wages, without meeting or vote of the petitioner's employees and without authority or request of the empolyees.

No case is cited to sustain the claim of the respondents that the Central Trades Council might seek or demand from the petitioner in behalf of its employees a change in wages,—which at that time as shown by the record were satisfactory to both the petitioner and its employees—without the

previous request or authority of the employees, to make such demands or to represent or speak for them in that regard.

The function of labor unions and the authority to represent *its members* (in the case at bar none of the petitioner's employees were members of the Tri-City Central Trades Council and there is affirmative proof of only one of the employees being a member of any labor organization) is aptly referred to in Kemp *v.* Division No. 241 Ass'n., *supra,* as follows:

> "The purpose of organizing labor unions is to enable those employees who become members to negotiate matters arising between them and their employers through the intermediation of officers and committees of the union, and to accomplish their ends through concerted action. *If duly authorized by the employees to adjust any controversy arising between them and their employers, the union, its officers and committees, are merely acting as agents of the employees in the matter.* If the union employees have the legal right to inform their employers of their refusal to work with the appellees, they had the legal right to convey that information to the employer through an agent or agents, and the agent or agents who so act would not commit an actionable wrong thereby, nor by reporting back to the union employees the result of the conference with the employer."

In that connection let us draw attention to statement on page 13 of respondents' brief on petition for Writ of Certiorari, in referring to the case of L. W. & W. R. R. *v.* Switchmen's Union, 158 Fed. 541, where an injunction was sought to restrain switchmen from violating a contract by striking, where the Court is quoted as saying:

"I am inclined to think that defendants had the right to select a Committee to request a conference * * * and they could, if they chose to do so, delegate an officer of the Switchmen's Union to represent them and to advocate an adjustment of differences," as follows:

> "And that is just what the employees of the Mill Company did in this case, delegate such duty to the Tri-City Central Trades Council."

The Court will look in vain for anything in the record to sustain that statement.

At page 23 of respondents' brief we find:

> "* * * while in the case at bar the strikers were represented by the Tri-City Central Trades Council,"

and at page 26:

> "* * * and the wage earners employed in such mill were represented by the Central Trades Council."

We say with confidence the record not only fails to support these statements, but on the contrary expressly refutes and disproves them.

Walcher, the works manager of the petitioner, on cross examination by counsel for respondents, testified (Rec., 41), as follows:

> "Earl Galloway was admitted to my office and told me there was a committee that represented the labor organization; *I asked him if the committee represented our employees and he said they did not,* and I told him we didn't recognize any labor organization."

Galloway did not deny or contradict the testimony of Walcher to the effect that the committee

of which he, Galloway, was chairman, did not represent the employees of petitioner. When he was interrogated on this point he testified (Printed Rec., 44):

> "As chairman I went to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; he asked me who the committee was; if it was any of his employees; I told him not at the present time; that there had been but they were representatives of the different local unions."

The record is barren of any evidence to sustain any claim or statement to the effect that the Tri-City Central Trades Council or its officers or self-appointed committee were at any time authorized by the employees of the petitioner to seek a meeting with the petitioner with reference to wages or conditions of employment; or to make any demand upon the petitioner on account thereof; or to speak for them with reference thereto or with reference to any other matter.

The undisputed evidence is that the Tri-City Central Trades Council gratuitously and on its own initiative and not the employers of petitioner, declared a strike at the plant of the petitioner. That the employees made no complaint of their wages or working conditions. That the relations between the petitioner and its employees were in perfect amity and accord. That the Tri-City Trades Council demanded from petitioner a change in the scale of wages, and upon refusal to

deal with its committee, declared a strike at the petitioner's plant. There is no proof in the record to justify the argument or contention that any employee of the petitioner made complaint to either the Tri-City Trades Council or to any union affiliated therewith. The evidence, so far as the record discloses, is to the contrary.

The employees of the petitioner did not strike nor cause any strike. The circular appearing on page 30 of the record states who called the strike.

Even the two men who quit the employ of petitioner as a result of the strike called by the Tri-City Trades Council had no relation to or connection with the initiation of the strike, and as disclosed by the record, knew nothing of it until after the strike had been launched. Each testified that he quit work because a strike was on.

In that connection note these facts appearing in Kemp *v.* Division No. 21 Ass'n., *supra*:

> "The threat made by the committee that the members of the union would call a strike of the employees of the Railways Company unless their demands were complied with, meant no more than that the union employees would be notified to quit work in a body at a definite time if the non-union employees were retained in the service. *This action of the committee, if not then authorized, was ratified by an almost unanimous vote of the union employees. The union employees thereby authorized and instructed the union, its officers and members, to call the strike which it is sought by this proceeding to prevent. The contemplated action of the union employees is not the result of the dictation of any officer or officers of the union or of any person not interested in the employment, but is the*

voluntary action of the union employees of the Railways Company."

In the case at bar a very reverse state of affairs existed. The employees did *not* authorize the Tri-City Trades Council or its self-appointed committee to act for them, and did *not* ratify their action, but on the contrary were ignorant of the Trades Council's activities, and with the exception of two men, Churchill and Cook, refused to leave the employ of the petitioner, and in consequence were subjected to indignities, intimidation, terrorism and assault.

Since the decision in Kemp *v.* Division No. 241 Assn., *supra*, there was submitted to and passed upon by the Appellate Court of Illinois for the First District the case of Phillip Henrici Co. *v.* Alexander, 198 Ill. App. 568, dealing with a situation similar to the one in the case at bar. There was in that case no strike by the employees, but an effort was made by labor organizations (waiters' unions), on their own initiative, to force the Henrici Company, the employer, to establish and adopt a minimum wage, change the working conditions of the waitresses, and accept the principle of the closed shop by entering into an agreement with the labor organization. The waitresses employed by the Henrici Co. were non-union waitresses, were satisfied with their wages, with their work and with their working conditions, and had declined to leave the employment of the Henrici Co. The Henrici Company declined to enter into an agreement with the labor organizations for a closed shop, refused to establish a minimum wage, but expressed its willingness that the waitresses employed join any union if they chose to do so.

Upon the refusal of the Henrici Company to enter into the agreement proposed by the unions,

a strike was called on the restaurant of the Henrici Company. All of the waitresses employed by the Henrici Company, however, continued with their work as before. Thereupon the waiters' unions proceeded to picket in front of the Henrici restaurant, walking back and forth from a point about twenty-five feet east to a point about the same distance west of the restaurant, and saying to each other so that they could be heard by the passers-by: "There is a strike on at Henrici's." "We want $8 for six days work." "Don't eat under police protection," and words of similar import.

A bill was filed by the Henrici Company to enjoin the picketing, and a cross bill was filed by the defendants. The complainant prayed for an order enjoining the defendant, among other things, from "unlawful hindering, obstructing or interfering with the business of the complainant, from interfering with its employes by intimidation, insults or threats, from printing or publishing any printed matter calling attention to the fact that complainant's business is unfair and not unionized, or that a strike is on; from patrolling in front of or adjacent to the restaurant, etc." The Court on final hearing dismissed the cross-bill and granted the complainant an injunction as follows:

> "That the defendants to the original bill and each of them and their attorneys, solicitors, agents, servants and associates and each and every of them be enjoined and restrained from unlawfully hindering, obstructing or interfering with the business of the complainant, Philip Henrici Company, or its employees, by any act of violence or intimidation or by picketing or patrolling the street in front of or in the alley in the rear of complainant's place of business at 67 to 71 West Randolph Street, in the City of Chicago, Cook

> County, Illinois, *in such a manner as to intimidate, threaten or coerce any person or persons from entering or who may desire to enter said premises for the purpose of patronizing the complainant, or for any lawful purpose whatsoever*" (italics ours).

An appeal was prosecuted from the injunction order. The Appellate Court (page 575) said as follows:

> "The principal controversy, however, in this case, is as to the right of the defendants to picket complainant's place of business in the manner shown by the evidence. *The complainant contends that, under the law of this state, there is no such thing as peaceful picketing, and that under the law and facts in this case, the picketing should be enjoined without qualification.* In support of its contention numerous cases are cited. Reliance, however, is placed chiefly on the case of A. R. Barnes & Co. *v.* Chicago Typographical Union, 232 Ill. 424. On the other hand, the defendants contend *that peaceful picketing is not unlawful; that no act of violence was committed by any of the pickets* (*this is conceded by the complainant*), *and that therefore the bill should be dismissed for want of equity.* In support of their contention, the defendants cite the cases of Kemp *v.* Division No. 241, 255 Ill. 213; and Iron Moulders' Union *v.* Allis-Chalmers Co., 166 Fed. 45." (Italics ours.)

The Court, after reviewing the various decisions decided as follows (page 579):

> "The decree enjoins picketing and patrolling the complainant's place of business and then qualifies the same by the following language: '*In such a manner as to intimidate, threaten or coerce any person or persons from*

> *entering or who may desire to enter said premises for the purpose of patronizing the complainant, or for any lawful purpose whatsoever.'* In this qualification the court erred. We are of the opinion that under the facts in this case, the manner of picketing as shown by the evidence was not justified and should be enjoined. The decree will, therefore, be modified by *striking therefrom* the following words: *'In such a manner as to intimidate, threaten or coerce any person or persons from entering or who may desire to enter said premises for the purpose of patronizing the complainant, or for any lawful purpose whatsoever,'* and as so modified the decree of the Circuit Court is affirmed." (Italics ours.)

It will be noted that the Appellate Court of Illinois in reviewing the cases on the subject, gave special consideration to the case of Barnes *v.* Typographical Union, *supra,* on one side of the proposition and to the case of Kemp *v.* Division No. 241, *supra,* and Iron Moulders Union *v.* Allis-Chalmers Company, *supra,* on the other side, and upheld and reaffirmed the rule laid down in Barnes *v.* Typographical Union, *supra,* as the law of the State of Illinois on the subject in question.

We are not advised of any other case decided in Illinois since the Henrici case, and the law as laid down in Barnes *v.* Typographical Union, *supra,* still stands as the rule in Illinois upon the subject in question entirely unmodified and unreversed.

We confidently contend that the decision in Kemp *v.* Division No. 241 Ass'n., *supra,* in no way modified or overruled the Illinois Rule as set forth in the decisions of the Supreme Court of that State hereinabove cited and that on its facts it is entirely inapplicable to the instant case.

III.

Iron Moulders Union v. Allis-Chalmers Co., supra Not Applicable or Authority in This Case.

The strike on the petitioner's plant, of the "Central Trades Council" and its purpose as proved were clearly contrary to the statutes of the State of Illinois and contrary to the law of that state as established by the decisions of its Supreme Court.

The Circuit Court of Appeals saw fit to ignore and disregard these statutes of Illinois and decisions. It undertook to decide this case upon the authority of Iron Moulders' Union *v.* Allis-Chalmers Company, *supra.* That case we insist is not authority in support of the decision of the Circuit Court of Appeals nor properly applicable to the instant case, and that the cases cited in support of the rule there laid down, deal with an entirely different class of cases than the case at bar, and do not sustain the opinion of the Circuit Court of Appeals. Indeed, Judge Grosscup, a member of the court deciding Iron Moulders' Union *v.* Allis-Chalmers Company, supra, in a separate opinion demonstrates that the decision there is inapplicable to the instant case and rather prophetically anticipated just such a misconception and misapplication of that decision as has happened here.

In each of the cases cited by the Circuit Court of Appeals in support of its opinion there *existed a controversy between employer and employee;* a strike had been called by the *employees* and *not by any stranger* to the employer, nor by any *outside organization* unauthorized to represent or speak for, the employees.

As matter of fact in the instant case there never was a strike in the ordinary acceptation of the term. There was here a deliberate conspiracy on the part of this Trades Council for reasons and purposes of its own, to strike down the industry of the petitioner; to force and coerce the employees who were satisfied and contented to leave their employment; violate their contracts of employment with their employers; dictate to the petitioner terms and conditions upon which it could employ its men; substitute itself for the employer and the employee as the contracting parties, and, failing to secure more than two of the employees to withdraw from the plant, proceeded to intimidate, assault, beat and injure the employees of the petitioner; and that not being sufficiently effective threatened to destroy the petitioner's plant.

The lexicographers have defined what a strike is, and in every instance the definition proceeds upon the theory that it is bottomed upon a controversy between *employer* and *employee*.

Bouvier's Law Dictionary defines a strike as follows:

> "A combined effort by workmen to obtain higher wages or other concessions from their employers by stopping work at a pre-concerted time."

The evidence in this record shows there was no such act by the workmen and employees of this petitioner.

Black's Law Dictionary, defining a strike, says:

> "The act of a body of workmen employed by the same master in stopping work altogether at a prearranged time and refusing to continue until higher wages or shorter time or some other concession is granted."

The evidence in this record shows that the body of workmen employed by the petitioner did not stop work at a prearranged time or any other time and did not refuse to continue their employment until higher wages or shorter time or other concession was granted.

The Century Dictionary defines a strike to be:

> "A concerted or joint quitting of work by a body of men or women for the purpose of coercing thei. employer in some way as when higher wages or shorter hours are demanded or a reduction of wages is resisted—a joint refusal to work as a coercive measure."

The evidence in the case at bar shows the men did not quit work for the purpose of coercing petitioner; on the contrary it shows the men were contented and without complaint.

In *Iron Moulders' Union* v. *Allis-Chalmers Company, supra*, the controversy arose out of a *strike of the employees* of the Allis-Chalmers Company as a result of a united effort on the part of the members of all foundries unions. And in the separate opinion Judge Grosscup called attention to the differentiation between a case involving a strike of the employees actually pending, as against an effort, without such strike existing, to interfere with business and as occurred in the case at bar. Judge Grosscup says:

> "And it is with respect to this somewhat anomalous relationship that, as I understand it, this opinion speaks; a statement that it seems to me ought to be made to confine the opinion to the actual situation to which it is intended to relate—to differentiate what we say from what might arise in cases where, *neither strike nor lock-out pending*, persuasion is resorted to to induce other employers not to employ given applicants for employment, or to persuade employees not to take

> employment with given employers, *upon which questions we do not, as I understand it, express* any opinion."

Judge Grosscup in this separate opinion defines a strike as follows: "A strike is cessation of work *by employees* in an effort to get for the employees more desirable terms."

The Court will find that in each of the other cases cited by the Circuit Court of Appeals in support of its decision in Iron Moulders' Union *v.* Allis-Chalmers Company, supra, there was an actual dispute between *employer and employee* and *an actual "strike" by the employees.*

In Pope Motor Car Co. *v.* Keegan, 15 Fed., 148, it appears affirmatively that there was a strike by the employees of the Pope Motor Car Company, and the strike was due to a refusal to submit to the dictation of Keegan and Keck, who were officials of the International Association of Machinists, *and that all the defendants in that case except Keegan and Keck had been in the employ of the complainant company, and at the time of the filing of the bill were out on a strike.*

In Karges Furniture Co. *v.* Amalgamated Wood Workers' Local Union, 165 Ind., 421, it appears on April 1, the demands upon the employers not having been complied with, *all the plaintiff's employees but about twenty non-members of the union, each one acting voluntarily in concert with others, and in pursuance of the agreement and vote, quit their employment and left the plaintiff's factory.*

In Everett *v.* Typo Union, 105 Va., 188, it appears:

> "In September, 1905, the Typothetæ finally refused to grant the eight-hour day, and thereupon the Typographical Union instructed the local unions in the different cities of the United States (among them the City of Rich-

> mond) to declare a 'strike' where the eight-hour day was refused; and the appellants, members of Richmond Typothetæ, the owners and operators of printing establishments in the City of Richmond, still refusing to grant the eight-hour day, Typographical Union No. 90, *the employees of appellants, on September 11, 1905, went out on a 'strike'.*"

In Jones *v.* Maher, 116 N. Y. Supp., 180, it appears that the employer in that case made certain discharges, including five foremen, and it further appears (page 182):

> "*Upon the discharge of the foremen, most of the people working under them left with them at noon, and when Scofield arrived, others, including the defendant Volkman, one of the foremen discharged that day, also left the factory. The discharged foremen and the employees who had stayed out or gone out, some 70 to 90 in all, thereupon held a meeting, and with the aid and counsel of Schofield organized a strike.*"

Gray *v.* Building Trades Council, 91 Minn., 171, was a case of boycott involving a controversy between electrical contractors and engineers and various trades.

Though this case does not involve the questions presented in the case at bar, and therefore is not an authority, yet we find the statement that *a strike must involve a quitting of the service of the employer,* and in the case at bar there was no quitting of the service by the employees of the petitioner because there was no strike by them. As is disclosed by the record, *only two employees left because the Tri-City Central Trades Council had called a strike, and not because the employees either were dissatisfied or struck.*

In re. Ex parte Heffron, 139 Mo., 639, the statement of the facts does not clearly demonstrate the

relations of the parties in the case, but it is disclosed sufficiently from the decree that the case involved the acts of the employees.

In Jones *v.* Van Winkle Gin & Machine Works, 131 Ga., 336, it appears clearly from the statement of the case by Presiding Judge Evans that the action was against persons who were employees of the plaintiff, but who were on a strike. It is interesting to note that the opinion in this case is authority in support of the contention of petitioner, especially as applied to picketing and the manner thereof indicated in the opinion of the court in the case at bar.

Referring again to Iron Moulders' Union *v.* Allis-Chalmers, supra, we submit that the very first paragraph in the opinion of Circuit Judge Baker conclusively establishes the dissimilarity and the inapplicability of that case to the instant case. Judge Baker said (page 48):

> "No Wisconsin statute authorized an unincorporated voluntary association to be sued in its common name. So the objection might have prevailed if it had been seasonably made," citing cases. "But the members could have been reached, of course, either by naming and serving them all, or, if that were impracticable on account of their numbers, by suing some as representatives of all. *The bill treated the unions as representative of their membership;* an individual member filed a verified answer in the names of the unions, alleging that he had been authorized by them so to do; and the case was carried through three hearings (temporary injunction, contempt, final decree) without a suggestion that there was a defect of parties, or rather a defect in the form under which appellee asked to have the membership of the unions brought into court. An objection of this kind will not be entertained on appeal unless it has been first duly presented in the trial court. Barnes

v. Chicago Typographical Union, 232 Ill. 424, 83 N. E. 940, 14 L. R. A. (N. S.) 1018."

It will be observed that the Allis-Chalmers, at whose plant a strike was initiated by the union, in its bill of complaint *recognized the unions as such to be the representatives of its employees and to have authority from its employees to strike, and in that capacity made the unions defendants to its bill of complaint.* Of course, no such situation exists in the case at bar. The difference is vital and this fact in itself should exclude its applicability in the consideration of this case.

On page 49 the opinion proceeds as follows:

> "The record shows that the local unions had a conference in regard to conditions in all the foundries in the city and county of Milwaukee; that they formulated demands respecting wages, overtime, double time on holidays, piecework, weekly pay day, limitation of the number of apprentices, and a joint arbitration board; that these demands were made alike upon all the foundry owners within that territory; and that when the demands were rejected *the union men in all the foundries struck.*"

Here again we find a vital difference between the facts in that case and the facts in the case at bar. There all the union men (employees) in the foundry of the Allis-Chalmers Company, as well as other foundries there, struck. No such state of facts exists in the case at bar, and pertinent is the separate concurring opinion of Judge Grosscup, that, both the reasoning and conclusion in that case should not and was not intended to apply to

> "* * * cases where, neither strike nor lockout pending, persuasion is resorted to to induce

> other employers not to employ given applicants for employment, or to persuade employees not to take employment with given employers''

and

> ''* * * upon which questions we do not, as I understand it, express any opinion.''

In the instant case there was not pending either a strike of the petitioner's employees or a lockout by the petitioner of its employees. The first and only action with reference to the strike was the action of the officers of the Tri-City Central Trades Council, to which none of the employees of the petitioner were parties and of which the employees of the petitioner were ignorant until the hand bills of the Tri-City Central Trades Council were posted and circulated; and followed up by the efforts of the Central Trades Council to win support by withdrawal of the petitioner's employees from petitioner's employment, resulting in the withdrawal of the two men Churchill and Cook.

The Circuit Court of Appeals entirely misconceived and misapplied the decision in Iron Moulders Union *v.* Allis-Chalmers, supra. It gave no consideration to the difference in the facts and the circumstances existing there, and paid no heed to the vital differentiation expressed by Judge Grosscup in his separate opinion.

But even were Iron Moulders Union *v.* Allis-Chalmers, *supra*, applicable to the instant case in its facts and its conclusions, still it was not authority in the instant case, being contrary to the statutes of Illinois and the rule of law in Illinois as established by the decisions in the Supreme Court in Barnes *v.* Typographical Union, *supra*, and other cases cited.

We insist there is involved here a strict rule of property upon which the Supreme Court of Illinois has spoken, and even in equity the Federal courts will respect and enforce the laws of the State where the construction of state statutes and state constitutions are involved (and such are not in contravention of the Federal Constitution) or where a rule of property is involved.

On the bill of complaint in the case at bar, an injunction was granted to protect the petitioner and its property and its right of property, amongst which are, the contractual relationship between its employees and itself; its right to the lawful pursuit of its business and property, free from annoyance, interference and destruction, as undertaken and practiced by respondents; and its right to enforce by injunction and restraint the respondents' violation of Sections 46, 158 and 159 of Chapter 38 of the Criminal Code of the State of Illinois.

IV.

Under the decisions of this Court the rule in Illinois should control the decision in this case.

Counsel for respondents insists that petitioner having sought relief in the Federal Court, the case must be decided by the Federal Court without regard to the statutes and decisions in Illinois. There is no principle or precedent to sustain respondent's position in this regard. The bill was filed in the Federal Court on the basis of diversity of citizenship. In selecting the Federal Court as its forum, the petitioner waived none of its rights of protection under the laws of the State of Illinois whether established by statute or by decisions of the Supreme Court. The facts set up

in the bill of complaint and proved at the hearing probably conveys some indication of the reason for petitioner's choice of forum. Counsel for respondents said, Why was bill filed in the Federal Court, 100 miles removed from the scene of action? Why did it not proceed in the county in which its plant is located and operated? The Mayor of Granite City, Illinois, where the petitioner's plant is located, an acknowledged socialist and sympathizer with the strike, was appealed to for aid to preserve order, and the appeal fell on deaf ears. No aid was given. The Sheriff of that county was also appealed to for protection against lawlessness and brutality and outrages being practiced by the respondents and their pickets, yet the officer required under the law to give protection to property and person paid no heed to petitioner's request, but, on the contrary, permitted this brutality and violence and thuggery to go on unmolested. It was only after an injunction was served that the criminality and the cruelties of violence and assault were stopped, and have remained stopped ever since the process of the Federal Court came into force and execution.

The petitioner had the legal right to seek the Federal Court as its forum and in doing so neither waived nor lost any rights of property or protection under the statutes and judicial decisions of the State of Illinois.

It is our contention under the decisions of this Court, that the rule of law established by the statutes of Illinois and under the decisions of the Supreme Court of Illinois, must prevail and that any ruling of this court under which it may be claimed, because the instant case is a proceeding in equity, that the Federal Courts may adopt a rule

of their own and may decline to follow the statutes and decisions of a state, cannot be made applicable to the instant case. In support of our contention in this regard we cite first the case of Burgess *v.* Seligman, 107 U. S. 20. This Court said in that case at p. 33 as follows:

> "Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the state, and have all the effect of law, and which it would be wrong to disturb. *This is especially true with regard to the law of real estate, and the construction of state constitutions and statutes. Such established rules are always required by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is.* But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, *or when there has been no decision of the state tribunals,* the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have accrued. But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State Courts."

The rule there announced still holds. It has never been changed or modified in any subsequent decisions. The petitioner claimed protection and relief assured to it under the statutes of Illinois and under the decisions of the Supreme Court of the State of Illinois. The subject matter of petitioner's bill of complaint and proceeding involves vested and established rights of property located in Illinois, protection of which was assured and vouchsafed both by the statutes of Illinois and by the adjudications of its Supreme Court, and the right to enforcement of which for the protection of its property and its property rights were enacted and became law in the years 1863 and 1887, respectively. The decisions of the Illinois Supreme Court under which petitioner claims its rights to retain the permanent injunction granted by the District Court, were made as early as 1898. Petitioner's bill of complaint was filed on May 13th, 1914, and final judgment and decree granting the permanent injunction was entered June 9th, 1914.

The State of Illinois had spoken both by statute and by the official pronouncement of its Supreme Court upon the subject matter in question before any of the branches of the Federal Courts in the Seventh Circuit or this court had expressed any opinion, view or judgment.

Under the authority of Burgess *v.* Seligman, *supra,* the state tribunals having spoken and neither the Congress of the United States nor the Federal Courts of the United States having pronounced either by legislation or decision prior to the establishment of petitioner's right under statutes and under state decisions, the laws of the Federal Courts will follow the statutes and decisions of the State of Illinois.

And under the same authority, there being involved here the construction of the statutes of

the State of Illinois, these having been considered and interpreted by the Supreme Court of the State of Illinois, the Federal Courts will proceed in accordance with the State statutes and the interpretation thereof by the Supreme Court.

Under this rule of law, the petitioner is entitled to have its rights judged and decided by this Court in accordance with the provisions of the Illinois statutes and the decisions of the Illinois Supreme Court.

The ruling announced in Burgess *v.* Seligman, *supra*, has been followed by this Court in Butcher *v.* Cheshire Railroad Co., 125 U. S. 555, as also in the case of Gormley *v.* Clark, 134 U. S., 138. The opinion of this Court in Butcher *v.* Cheshire Railroad Co., *supra*, was delivered by Mr. Justice Miller. He said on page 582 as follows:

> "The language of the statute limits its application to cases of trials at common law There is, therefore, nothing in the section which requires it to be applied to proceedings in equity or in admiralty, nor is it applicable to criminal offences against the United States (see U. S. *v.* Reid, 12 How. 361), or where the Constitution, treaties or statutes of the United States require other rules of decision. But with these, and some other exceptions which will be referred to presently, it must be admitted that it does provide that the laws of the several states shall be received in the courts of the United States, in cases where they apply, as the rules of decision in trials at common law.
>
> "It has been held by this court that the decisions of the highest court of a state in regard to the validity or meaning of the Constitution of that state, or its statutes, are to be considered as the law of that state, within the requirement of this section. In Leffingwell *v.* Warren, 2 Black, 599, this court said in regard to the statutes of limitation of a state: 'The construction given to a statute of a state by the highest tribunal of such state is re-

garded as a part of the statute, and is as binding upon the courts of the United States as the text.' * * *

"It is also well settled that where a course of decisions, whether founded upon statutes or not, have become rules of property as laid down by the highest courts of the state, by which is meant those rules governing the descent, transfer or sale of property, and the rules which affect the title and possession thereto, they are to be treated as laws of that state by the Federal courts. * * *

"There are undoubtedly exceptions to the principle that the decisions of the state courts, as to what are the laws of that state, are in all cases binding upon the Federal courts. The case of Swift *v.* Tyson, 16 Pet. 1, which has been often followed, established the principle that if this court took a different view of what the law was in certain classes of cases which ought to be governed by the general principles of commercial law, from the state court, it was not bound to follow the latter. There is, therefore, a large field of jurisprudence left in which the question of how far the decisions of state courts constitute the law of those states is an embarrassing one.

"There is no commmon law of the United States, and yet the main body of the rights of the people of this country rest upon and are governed by principles derived from the common law of England and established as the laws of the different states. Each state of the Union may have its local usages, customs and common law. Wheaton *v.* Peters, 8 Pet. 591; Pennsylvania *v.* Wheeling Bridge Co., 13 How. 519.

"When, therefore, in an ordinary trial in action at law we speak of the common law, we refer to the law of the state as it has been adopted by statute or recognized by the courts as the foundation of legal rights. It is in regard to decisions made by the state courts in reference to this law, and defining what is the law of the state as modified by the opinions of its own courts, by the statutes of the state,

and the customs and habits of the people that the trouble arises.

"It may be said generally that wherever the decisions of the state courts relate to some law of a local character, which may have become established by those courts, or has always been a part of the law of the state, that the decisions upon the subject are usually conclusive and always entitled to the highest respect of the Federal courts. The whole of this subject has recently been very ably reviewed in the case of Burgess *v.* Seligman, 107 U. S. 20. Where such local law or custom has been established by repeated decisions of the highest courts of a state, it becomes also the law governing the courts of the United States sitting in that state."

The case of Gormley *v.* Clark, 134 U. S. 338, arose in the State of Illinois under what is known as "Burnt Record Act," a proceeding, though cognizable under the provisions of the statute in the courts, having chancery jurisdiction, *yet in effect is tantamount to proceedings for ejectment which under the Illinois statutes are initiated and prosecuted as an action at law.*

The constitutional question involved was that the "Burnt Record Act" requiring proceedings thereunder to be in the nature of equity proceedings determinable on the chancery side of the court deprived the defendant in such action of his right of trial by jury, which, under the Constitution of the State of Illinois, was secured to him in actions at law. The Supreme Court of the State of Illinois sustained the right of procedure in equity under the Burnt Record Act, which made no provision for trial by jury.

* * * * * * *

At page 348 the Court speaking through Chief Justice Fuller said:

"Upon the construction of the constitution and laws of a state, this court, as a general rule, follows the decisions of her highest court, unless they conflict with or impair the efficacy of some provision of the Federal Constitution, or of a Federal statute, or a rule of general commercial law. Norton *v.* Shelby County, 118 U. S. 425, 439. And this is so where a course of those decisions, whether founded on statutes or not, have become rules of property within the state; also in regard to rules of evidence in actions at law; and also in reference to the common law of the state, and its laws and customs of a local character when established by repeated decisions. Burgess *v.* Seligman, 107 U. S. 20; Bucher *v.* Cheshire Railroad Co., 125 U. S. 555. Substantially conclusive effect is given to such decisions upon the construction of state statutes, as affecting title to real estate within the state. * * *

"And while the rule is thoroughly settled that remedies in the courts of the United States are at common law or in equity, according to the essential character of the case, uncontrolled in that particular by the practice of the state courts, New Orleans *v.* Louisiana Construction Company, 129 U. S. 45, 46. Yet an enlargement of equitable rights by state statute may be administered by the circuit courts of the United States as well as by the courts of the state; and when the case is one of a remedial proceeding, essentially of an equitable character, there can be no objection to the exercise of the jurisdiction."

There is involved here, right of property in Illinois. As also the construction of statutes of Illinois. And the Federal Courts not having expressed or adopted a rule of law applicable to this case, contrary to or different from that expressed in Illinois by statute as also by the decisions of its Supreme Court, the petitioner contends, this Court will follow and respect the rule of law as established in Illinois as aforesaid.

V.

The rule in Illinois relating to picketing without physical violence is sustained in other states and jurisdictions.

In Atchison, Topeka & Santa Fe *v.* Gee, 139 Fed. 582, the court says, at page 534:

> "But as to one phase of the case there is no denial, but practically a confession, with the alleged and boasted right to practice it. A system of 'pickets' for more than a year, around and near by places to the shops of the company, has been kept up by all the accused and others. The pretense of this picketing is the right to converse with the new employees and persuade them to quit, and the further pretense that they desire to see who are at work. This picketing is done by details of pickets, assigned by others, they taking turn. At all hours when men are going to and from work, morning, noon and evening, the workmen must go through and by pickets, sometimes two, four, six and more at a place. At times the paths and walks are obstructed. At times the pickets are near by, making grimaces, and at times acting as if violence were intended, and at times uttering profanity and vulgarity. *There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity or peaceful mobbing, or lawful lynching. When men want to converse or persuade, they do not organize a picket line. When they only want to see who are at work, they go and see, and then leave and disturb no one physically or mentally. But such picketing as is displayed in the case at bar by the evidence does, and is intended to, annoy and intimidate. The argument seems to be that anything short of physical violence is lawful.* One man can be intimidated only when knocked down. But the peaceful, law-

abiding man can be and is intimidated by gesticulations, by menaces, by being called harsh names, and by being followed, or compelled to pass by men known to be unfriendly. Perhaps such a man may not be a bully, but is frail in size and strength, or he may be a timid man; but such a man is just as much entitled to go and come in quiet, without even mental disturbance, as has the man afraid of no one and able with or without weapons to cope with all comers. The frail man, or the man who shuns disturbances, or the timid man, must be protected, and the company has the right to employ such."

In Beck *v.* Railway Teamster's Protective Union, 77 N. W. 13, the court says, at page 22:

"*It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They are intended to intimidate and coerce.* As applied to cases of this character, the lexicographers thus define the word 'picket': 'A body of men belonging to a trades union sent to watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress.' Cent. Dict.; Webst. Dict. The word originally had no such meaning. This definition is the result of what has been done under it, and the common application that has been made of it. This is the definition the defendants put upon it in the present case. Possibly the decree is specific enough to include picketing, but we deem it our duty to place it beyond controversy."

The court in Gompers *v.* Bucks Stove & R. Co., 221 U. S. 418, said:

"But the very fact that it is lawful to form these bodies (labor unions), with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, can-

> not be met, except by his purchasing peace at the cost of submitting to terms which involve *the sacrifice of rights protected by the constitution;* or by standing on such rights, and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of the government to protect the one against the many, as well as the many against the one."

In Jones *et al. v.* E. Van Winkle Gin and Machine Works, 131 Ga. 336 (62 S. E. 237), the court says:

> "Other cases similar in principle might be added but these are sufficient to illustrate our point, which is that when strikers patrol the streets and approaches of the premises where the strike is in progress, and their number is so great, or their conduct is such, as to intimidate and coerce the employees into quitting their employment, or others from seeking employment, they are guilty of unlawful acts, and will be enjoined from a continuance of them. Sometimes the number of strikers engaged on the patrol may be so great that those intended to be affected by the demonstration will be intimidated by the number of the strikers or their sympathizers without special overt acts. *The courts have repeatedly held that the assembling of strikers around the establishment of the employer in such numbers as will serve as a menace to those employed, or the keeping of patrols in front of or about the premises of the employer, accompanied by violence or any manner of coercion to prevent others from entering into or remaining in his service, will be enjoined."*

Also in Sailors Union *v.* Hammond Lumber Co., 156 Fed. 450 (454), the court says:

> "But it is said that the injunction goes further than the law permits, in that by its lan-

guage it prohibits the appellants from doing that which they have the lawful right to do. By the order of the court the appellants are enjoined 'from in any wise interfering with the crews, foremen, cooks, stewards, seamen, or either of them, or any of the servants or employees of the said steam schooners or steamship or either or any of them, without due process of law; * * * from in any wise interfering with the business of the said steam schooners and said steamship except by due process of law, with the business of complainant or orator of and concerning the said steam schooners and the said steamship; * * * and from in any wise conspiring, colluding or confederating together for the purpose of preventing the said steam schooners and steamship from receiving and discharging freight and passengers.' It is said that under this injunction the appellants would be in contempt if they asked one of their relatives not to go as a passenger on one of the appellee's steamers, or if they made complaint of the violation of navigation laws of the appellee's vessels, or if they exercised their right to discriminate against the appellee by shipping cargo on other vessels than those of the appellee. The language of the injunction, however, is to be interpreted in the light of the allegations and prayer of the bill, and these may make an otherwise indefinite order sufficiently specific. (Hamilton *v.* State, 32 Md. 348.) It is the acts set forth in the bill that the appellants are enjoined from doing."

Stephen *v.* Ohio State Telephone Co., 240 Fed. Rep. 759. See pages 769, *et seq.* And having reference to what may fairly be defined as "peaceful" and "lawful" action, the Court submitted the following inquiries:

> "What constitutes peaceful picketing may be answered by any fair-minded man, if this question is asked, 'Would this be lawful if no strike existed?'

"We accept this as a very good test and apply it to the concrete questions of fact arising in this case, as propounded in the several informations, with conclusions certain to come to every 'fair-minded man.' Suppose no strike were in progress—

"Would it be lawful for one or more men to use offensive, abusive, insulting or threatening language to another or others—for one to call another a 'rat,' a 'scab,' a 'thief,' an 'outcast' or by any other name commonly accepted as offensive or degrading or calculated to provoke the other to break the peace in resentment?

"Would it be lawful for one man or more to take station adjacent to the place of rent, lodging, or work of another or others, and there, by gesture, language, or otherwise, convey to the other insult or threat?

"Would it be lawful for one or more men to force his or their talk upon the unwilling ear of another—to compel him to listen against his will?

"Would it be lawful for one man or more to persistently follow another to and from his work, to his home or lodging and about the city, forcing upon him unwillingly their presence, without occasion other than to unmistakably suggest to him their hostility unless he meets their views?

"Would it be lawful for one to photograph another against his will, especially under circumstances which indicate unfriendliness to be the spirit, and a hostile use of the photograph to be the object?

"Would it be lawful to slink upon an unsuspecting man, inoffensively gazing into a shop window, and deal him a blow—to step from the hiding of an alley to trip a lady, and then to strike her escort as he stoops to her assistance?

> "These questions are formulated upon the testimony produced in open court, because of which attachments were issued under the law, resulting in the filing of informations against which counsel for respondents has presented the motions we are considering."

In the case of Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., 263 Fed. Rep., 192, the Court, dealing with the subject of picketing, said on page 202 as follows:

> "The picketing in question, therefore, presents a not unusual, but, in the judgment of this court, the always unlawful, situation of persons who stand in no special relationship to an employer—persons who have no privileges not common to all men—attempting to interfere with the business of such employer by propagandic activities directed against his working force, or his product, or both. We are aware that a notion is widely entertained that any employer may be organized against by any body of persons, with a view to affecting the manner in which he transacts his business; but such an impression is not, by any means, justified as broadly as it is held. One may freely choose the manner in which he will conduct a lawful business, accountable only to the police power of his community, and to him is given freedom of contract for employment therein. If he and his employees are in contractual relationship respecting terms and conditions of employment opportunity is not lawfully given to others to interfere. Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. Cas. 1918B, 461, and Eagle Glass & Mfg. Co. *v.* Rowe, 245 U. S. 275, 38 Sup. Ct. 80, 62 L. Ed. 286."

See also Kinloch Telephone Co. *v.* Local Union No. 2, 265 Fed. Rep., 312, and note the following language of the Court at page 317:

> "These provisions, of course, do not confer any right to assemble about or to picket the shop or place of business of any former employer under such circumstances, or in such numbers as to menace peace or produce intimidation by reason of the very fact of numbers. Neither does it permit any striker, or any person acting in concert with any striker, to use physical force or intimidation of any sort, or abuse, or duress, or any threat of physical force, either to the employer, or to the employees who are working, or to persons who are seeking employment of the employer, or to persons who have business, or who desire to transact business, with the employer. So much, I think, is clear from the provisions of the act itself, because, plainly the test therein of what may be done is what any ordinary citizen would have been permitted to do if no labor dispute existed. Stephens *v.* Telephone Co. (D. C.) 240 Fed. 759; Duplex Co. *v.* Deering (D. C.) 247 Fed. 192.
>
> "'Peacefully,' as used in this act means peacefully in the strict sense of that word; for it will be noted that the words 'peacefully' and 'lawfully' run as red threads through the very warp and woof of this act. Surely no persons can be said to act peacefully, when they crowd the streets, sidewalks, or alleys near to or adjacent to the shop or place of business under their displeasure and, though silent, threaten and intimidate by numbers."

VI.

Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, and similar cases sustain petitioner's contentions.

The instant case comes within the decisions of this Court rendered since the decision of the Circuit Court of Appeals. The law as now established by this court clearly entitles the petitioner to retain the injunction granted by the district court in the form fixed in the final decree and unmodified in manner directed by the Circuit Court of Appeals.

The respondents not only have been guilty of violation of the statutes and the laws of the State of Illinois as above demonstrated, but have been guilty of a clear invasion of the rights and property of the petitioner as decided by this Court in the Hitchman and other cases. The respondents for an unlawful purpose sought and proceeded to interfere with the relationship between the petitioner and its employees. They sought to force and coerce petitioner against its will to make terms and conditions of employment contrary to the existing agreements and contracts between itself and its employees. The respondents entered into and sought to carry out a deliberate conspiracy to force the employees of petitioner, who were satisfied, contented and without complaint either as to wages or conditions of labor, to abandon their employment, to violate their contracts and thereby force the establishment of a new basis of employment between the petitioner

and its employees. In this conspiracy the respondents neither represented the employees nor were they authorized to speak for the employees. They were strangers to both and gratuitous meddlers and interlopers in a situation that was tranquil and contented and in which they had no interest.

The case decisive of the instant case is Hitchman Coal & Coke Co. *v.* Mitchell, *supra.*

In that case there was not even present the horrible state of brutality and lawlessness existing and proved in the case at bar. In that case this court holds with the District Court in the case at bar that picketing and persuasion unaccompanied by force under the circumstances in that case as well as in the case at bar, are not permissible and should be enjoined and says at page 257:

> "Another fundamental error in defendant's position consists in the assumption that all measures that may be resorted to are lawful if they are 'peaceable'—that is, if they stop short of physical violence, or coercion through fear of it. In our opinion, any violation of plaintiff's legal rights contrived by defendants for the purpose of inflicting damage, or having that as its necessary effect, is as plainly inhibited by the law as if it involved a breach of the peace. A combination to procure concerted breaches of contract by plaintiff's employees constitutes such a violation. Flaccus *v.* Smith, 199 Pa. 128; 48 Atl. 894; 54 L. R. A. 640; 85 Am. St. Rep. 779; South Wales Miners' Federation *v.* Glamorgan Coal Co. (1905), A. C. 239, 244, 250, 253; Jonas Glass Co. *v.* Glass Bottle Blowers' Association, 77 N. J. Eq. 219, 223; 79 Atl. 262; 41 L. R. A. (N. S.) 445."

In that case as well as here the court holds the employer is entitled to be protected in the enjoyment of the benefits of any lawful employment contract as against the gratuitous interference of an organization such as the respondent, Tri-City Central Trades Council, and says at page 251:

> "* * * the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This court repeatedly has held that the employer is as free to make non-membership in a union a condition of employment, as the working man is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power. Adair *v.* United States, 208 U. S. 161, 174; 28 Sup. Ct. 277; 52 L. Ed. 436; 13 Ann. Cas. 764; Coppage *v.* Kansas, 236 U. S. 1, 14; 35 Sup. Ct. 240; 59 L. Ed. 441; L. R. A. 1915C, 960. In the present case, needless to say, there is no act of legislation to which defendants may resort for justification."
>
> "The right of action for persuading an employee to leave his employer is universally recognized—nowhere more clearly than in West Virginia—and it rests upon fundamental principles of general application, not upon the English statute of laborers. Thacker Coal Co. *v.* Burke, 59 W. Va. 253, 255; 53 S. E. 161; 5 L. R. A.. (N. S.) 1091; 8 Ann.

> Cas. 885, 886; Walker *v.* Cronin, 107 Mass. 555, 567; Angle *v.* Chicago, St. Paul, etc., Railway, 151 U. S. 1, 13; 14 Sup. Ct. 240; 38 L. Ed. 55; Noice Adm'x *v.* Brown, 39 N. J. Law 569, 572."

To carry on and operate its business, petitioner required, as shown by the record, the services and labor of workers. The petitioner had the legal right to the employment of the work and activities of the men employed by it, and any interferences therewith was an illegal interference and was subject to injunction. The effort of the respondents by "striking" the plant of the petitioner for the purpose of forcing its employees to leave their work and its service, and the interference with the employees, were an illegal effort to secure the violation of the employment contract between the petitioner and its employees, were injurious to the business and the property and the property rights of the petitioner and subject to injunction.

It is not necessary there should be or that there should be proved, time contracts between the petitioner and its employes. Employment at will is sufficient. The petitioner is legally entitled to the employment of his employees under employment contracts at will and to the good-will resulting therefrom. This, too, was decided by this court in the Hitchman case, *supra,* at page 251:

> "Plaintiff, having in the exercise of its undoubted rights established a working agreement between it and its employees, with the free assent of the latter, is entitled to be pro-

tected in the enjoyment of the resulting status, as in any other legal right. That the employment was 'at will,' and terminable by either party at any time, is of no consequence. In Traux *v.* Raich, 239 U. S. 33, 38, his court ruled upon the precise question as follows: 'It is said that the bill does not show an employment for a term, and that under an employment at will the complainant could be discharged at any time for any reason or for no reason, the motive of the employer being immaterial. The conclusion, however, that is sought to be drawn is too broad. The fact that the employment is at the will of the parties, respectively, does not make it one at the will of others. The employe has manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion, and, by the weight of authority, the unjustified interference of third persons is actionable, although the employment is at will.' (Citing many cases.)

"In short, plaintiff was and is entitled to the good will of its employees, precisely as a merchant is entitled to the good will of his customers, although they are under no obligation to continue to deal with him. The value of the relation lies in the reasonable probability that by properly treating its employees, and paying them fair wages, and avoiding reasonable grounds of complaint, it will be able to retain them in its employ, and to fill vacancies occurring from time to time by the employment of other men on the same

terms. The pecuniary value of such reasonable probabilities is incalculably great, and is recognized by the law in a variety of relations. See Brennan *v.* United Hatters (cited with approval in Traux *v.* Raich, *supra*), 73 N. J. L. 729, 749; Brown *v.* Honiss, 74 N. J. L. 501, 514, *et seq.*; Jersey City Printing Co. *v.* Cassidy, 63 N. J. Eq. 759, 767; Walker *v.* Cronin, 107 Massachusetts, 555, 565-566; Moran *v.* Dumphy, 177 Massachusetts, 485, and cases there cited; L. D. Wilcutt & Sons Co. *v.* Driscoll, 200 Massachusetts, 110, 117, etc."

The Hitchman case also holds as contended for here that the right to strike is in the employee and not in an outside organization, and that the difference in rights in that regard is fundamental. See page 252:

"The case involves no question of the rights of employees. Defendants have no agency for plaintiff's employees, nor do they assert any disagreement or grievance in their behalf. In fact, there is none; but, if there were, defendants could not, without agency, set up any rights that employees might have. *The right of the latter to strike would not give to defendants the right to instigate a strike. The difference is fundamental.*"

No expression could more concretely and more aptly fit the instant case. The respondents, as proved beyond peradventure, both by admission and by proof, were not employees of the petitioner. The Tri-City Central Trades Council Com-

mittee did not come as employees or as the representatives of employees. The employees had no disagreement or grievance, and the respondents were neither authorized nor requested to present to the petitioner a grievance that did not exist. The interference of the respondent was purely gratuitous and unwarranted.

The purpose of the respondents in the case at bar was very much like that found to have been the purpose of the defendants in the Hitchman case, as indicated by the following language in the opinion there, page 233:

> "To cause your orator's mine to be shut down, its plant to remain idle, its contracts to be broken and unfulfilled, until such time as your orator shall submit to the demand of the union that it shall unionize its plant, and having submitted to such demand unionize its plant by employing only union men who shall become subject to the orders of the union, etc."

and here the Tri-City Central Trades Council sought to force and coerce the petitioner into paying a different and higher wage to its employees than was agreed between itself and its employees; a higher wage than the employees themselves asked for and were satisfied with; and if the change in wage was not made, the employees to be prevented from working and be forced to break and violate their contracts with the petitioner; the plant of the petitioner to be shut down, and if necessary brutality and terrorism practiced against the employees and if need be the property of the petitioner to be destroyed.

VII.

The law as announced in the Hitchman case is supported in other states and jurisdictions.

There are many cases in different states and jurisdictions similar in import and circumstances to Hitchman Coal & Coke Co. *v.* Mitchell, *supra.* We call attention to some of the cases, though it would seem unnecessary to do so.

See the case of Old Dominion Steamship Company *v.* McKenna, 30 Fed. Rep. 48, which was an action at law to recover damages from the Longshoremen's Union, which interfered with the business of the steamship company. The court said (page 49):

> "I have carefully considered the elaborate arguments of counsel, and examined the numerous authorities referred to. For lack of time, I can only state my conclusions:
>
> "1. All the material averments are either stated positively, or the source of information is sufficiently indicated.
>
> "2. The facts stated in the complaint and affidavit constitute a legal cause of action against all the defendants, for the actual damages suffered, for the following reasons:
>
> "(a) The plaintiff was engaged in the legal calling of a common carrier, owning vessels, lighters, and other craft used in its business, in the employment of which numerous workmen were necessary, who, as the complaint avers, were employed 'upon terms as to wages which were just and satisfactory.'
>
> "(*b*) *The defendants, not being in plaintiff's employ, and without any legal justification, so far as it appears—a mere dispute about wages, the merits of which are not stated, not being any legal justification—procured plaintiff's workmen in this city and in southern ports to quit work in a body, for the*

purpose of inflicting injury and damage upon the plaintiff until it should accede to the defendants' demands, and pay southern negroes the same wages as New York longshoremen, which the plaintiff was under no obligation to grant; and such procurement of workmen to quit work being designed to inflict injury on the plaintiff, and not being justified, constituted in law a malicious and illegal interference with the plaintiff's business, which is actionable."

United States *v.* Haggerty, 116 Fed. Rep., 510 (C. C. W. Va., 1902):

The Guaranty Trust Company of New York filed its bill against Haggerty and others, including Mary, alias Mother, Jones, some of whom are citizens and residents of the State of Pensylvania, Illinois, Ohio and West Virginia, asking that the defendants be restrained

> "from entering and trespassing upon the lands and property of the Clarksburg Fuel Company, and to restrain them from going on or about the said company's tipples, tracks, or other property, together or individually, so long as they are not in the employment of the said company for the purpose of unlawfully preventing said company's employees in engaging and remaining in its employment; that the defendants, and each of them, be enjoined and restrained from assembling, congregating, or camping at or near the plant, mines and places of business of the said company's property, or at or near the residences of the said employees, and the paths and roads traveled by the said employees in going to and returning from their work, for the purpose of preventing the employees of the Clarksburg Fuel Company from entering into or continuing in said company's employment by intimidation, threats, or otherwise, whether by physical force or otherwise, and

whether by actual threats or otherwise to the person, property, or families of the said employees; that they be restrained from unlawfully interfering with the management of the business of the company; that the defendants, their confederates and their associates, be, each and all of them, enjoined from asembling together in camp or otherwise, near the mines of the company, or near the residences of its employees, whereby they would be disturbed, alarmed or intimidated from working in the mines, and preventing them from passing to and from their houses to the mines, or from doing any personal injury to the person of the employees of the said company or others who are desirous of entering into or remaining in its employment, or interfering in any unlawful way with any person who desires to go into and remain in said company's employment, and from visiting the houses and places of abode of the persons who are in the employ of the company, who are desirous of remaining in the employment of the company, for the purpose of preventing them by threats, menaces, or actual injury to their person or their property, or to the members of their family."

The Clarksburg Fuel Company was the owner of a large number of mines and mining plants, and also owned in fee simple several thousand acres of coal lands and leased almost as many acres more. It was engaged in mining coal and manufacturing coke and shipping the same to the open market in the United States. Its production was immense and its customers resided in all parts of the United Staes.

There was a general strike in the anthracite regions of the State of Pennsylvania, in which a large number of persons were involved—said to be more than 100,000. Those at the head of the organization known as the United Mine Workers

of America announced their intention to cause or create a strike among the miners of the soft coal regions of the United States, more particularly in the State of West Virginia, where the Clarksburg Fuel Company produced its coal, *not because of any grievance against the Clarksburg Company, but for the purpose of aiding the strike prevailing in the State of Pennsylvania, and to prevent the shipment of coal to localities that had been theretofore supplied with coal from the anthracite regions in the State of Pennsylvania.*

For this purpose the various defendants, including Mother Jones, who were known as "organizers," "agitators," and "walking delegates," representing the United Mine Workers of America, came into West Virginia for the purpose of agitating strikes among the employees working for various coal companies, particularly the Clarksburg Company. To that end the defendants Haggerty and Mother Jones addressed various meetings composed in part of coal miners, and thereby attempted to inflame and excite the hatred and animosity of miners towards the proprietors of the Clarksburg Company, as well as others, advised the miners to quit work, and in some instances the miners were actually assaulted by the strikers, and in another instance one of the mines belonging to the Clarksburg Company was attempted to be blown up.

All of the above had a bad effect on the employees of the Clarksburg Company, which tended to intimidate those working in the mines and prevent them from continuing in their work.

The bill charged a combination and conspiracy entered into by the defendants with others to bring about a strike; that as the result of the above agitation and acts of intimidation some of the employees of the Clarksburg Company and

others were induced to strike, although most of them preferred to work and remain in the employment of the company if they could be protected.

A temporary restraining order was entered and served upon the defendants, and the question the court has to consider in the above case is whether or not the defendants violated the court's order, and, if so, determine what punishment should be imposed upon them for its violation.

> "*It is to be observed that a very large portion of the miners in the employ of the Clarksburg Fuel Company do not want, in the language of one of the agitators who is enjoined 'to lay down their picks and shovels and quit work.'* I do not question the right of the employees of this company to quit work at any time they desire to do so, unless there is a contractual relation between them and the employer which should control their right to quit. At the same time I do not recognize the right of an employer to coerce the employees to continue their work when they desire to quit. But can it be said that where a conspiracy exists to control the employees, as in this instance, either by threats, intimidations, or a resort to any other modes usually accompanying the action of strikers, that such action upon their part is not only illegal, but a malicious and illegal interference with the employer's business? The question is its best answer. *While I recognize the right for all laborers to combine for the purpose of protecting all their lawful rights, I do not recognize the right of laborers to conspire together to compel employees who are not dissatisfied with their work in the mines to lay down their picks and shovels and to quit their work, without a just or proper reason therefor, merely to gratify a professional set of 'agitators, organizers, and walking delegates,' who roam all over the country as agents for some combination, who are vampires that live and fat-*

ten on the honest labor of the coal miners of the country, and who are busybodies creating dissatisfaction amongst a class of people who are quiet, well-disposed, and who do not want to be disturbed by the unceasing agitation of this class of people. In the case we have under consideration these defendants are known as professional agitators, organizers, and walking delegates. They have nothing in common with the people who are employed in the mines of the Clarksburg Fuel Company. The evidence in this case shows that their only object and purpose is to get the people who are in the employment of the Clarksburg Fuel Company to go out upon a strike, as it is termed, for the purpose of compelling the owners of the mines to advance an increase in their wages. It discloses that the miners in the Pinnickkinnick mines are making an average of $4 a day in excess of their legitimate expense, many of whom have worked in foreign countries for less than a half a dollar a day. The defendants in this case are not laborers in the mines, and have no connection with them whatever. Their mission here is to foment trouble, create dissatisfaction among the employees in coal mines, producing strikes, which tends greatly to damage and injure the business of the employers. In this case there is no dissatisfaction among the large number of the miners. *Only a small part of them have quit the mines from fear of intimidation, threats and violence, but those remaining in the mines say they will quit work unless they are protected against the threats of these agitators and organizers. The strong arm of the court of equity is invoked in this case, not to suppress the right of free speech, but to restrain and inhibit these defendants, whose only purpose is to bring about strikes, by trying to coerce people who are not dissatisfied with the terms of their employment, which results in inflicting injury and damage to their employers, as well as the employees.*

> "It is apparent that, if these agitators are permitted to interfere with the orderly, well-disposed miners who are anxious to work, and contented with the wages they receive, in the end this contented class of miners would, through fear, intimidation, as well as threats, be induced to throw down their shovels and picks, and cease to work in the mines, whereby the Clarksburg Fuel Company would be greatly damaged. Not only would it be greatly damaged, but it would be prevented from fulfilling its contracts for the future delivery of the product of its mines. The right of a citizen to labor for wages that he is satisfied with is a right protected by law, and is entitled to the same protection as free speech, and should be better protected than the abuse of free speech, in which the organizers and agitators indulge in trying to produce strikes."

Casey v. *Cincinnati Typographical Union No. 3*, 45 Fed. Rep. 135 (C. C. Ohio, 1891):

Casey was the proprietor and publisher of the Commonwealth, a daily and weekly newspaper published at Covington, Kentucky. He filed his bill to restrain the defendant, which is a corporation organized as a trades union or labor organization, composed of typesetters and printers, and certain individual defendants are the officers and managing agents of said Typographical Union from boycotting the complainant and his newspaper.

The defendant, Typographical Union, demanded that complainant unionize his office, that is to say, publish and conduct his paper according to the dictates of the Typographical Union, not only as to the method of publication, but wages to be paid his employees, and employ only such persons that met the approval of the Typographical Union, and discharge certain persons then in complainant's employ.

The complainant refused to comply with said demands, whereupon the defendants all conspired to and did put into execution a very successful boycott of complainant's paper, the various details of which were elaborately set forth in complainant's bill of complaint. The demands of the defendant, Typographical Union, which, if complied with, would have necessitated the discharge of every printer employed by the complainant and the substitution therefor of persons wholly within the control of the Typographical Union. *There was no trouble between the complainant and his employees. Each was satisfied with the relationships existing between them. There had been no complaint upon the part of the complainant's employees. The complaint came solely from other persons not having any financial interest in the affairs of the papers, none of whose members had any right to expect employment by the complainant.*

The court's opinion was rendered upon a motion for a temporary injunction and is one that is cited favorably in many subsequent authorities. The portion of the court's opinion, however, to which we invite this court's attention is found at page 146 of the report and consists principally of the approval of an opinion of Judge Carpenter of the Supreme Court of Connecticut in the case of *State* v. *Glidden*, as reported in 8 Atl. Rep., 890.

Judge Sage said:

> "In *State* v. *Glidden*, cited hereinbefore, Judge Carpenter, speaking for the Supreme Court of Connecticut, states that the defendants said in effect to the publishing company:
>
> "'You shall discharge men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true, we have no interest in your business; we have

no capital invested therein; we are in nowise responsible for its losses or failure; we are not directly benefited by its success; and we do not participate in its profits—yet we have a right to control its management, and compel you to submit to our dictation.'

"The court said that the bare assertion of such a right was startling; that, if it existed, all business enterprises were alike subject to the dictation and control of those who asserted it, and upon the same principle and for the same reason the right to determine what business men shall engage in, and then and where and how it shall be carried on, will be demanded, and must be conceded to associations of workingmen of the class of those whom it would be necessary to employ. The opinion in this case, although the case itself arose upon an indictment for conspiracy, is a well-considered discussion of the law with relation to boycotting. See, also, *Steamship Co.* v. *McKenna*, 30 Fed. Rep. 48."

State v. *Glidden et al.*, 8 Atl. Rep., 890 (Conn., 1887):

The defendants had been found guilty of a criminal conspiracy, the object of which was (1) to compel the Carrington Publishing Company, against its will, to discharge its workmen, and to employ such persons as the defendants and their associates should name; and (2) to injure and oppress the workmen then in the employ of said corporation, by depriving them of their said employment by first demanding the discharge of said employees, and upon such demand being refused, boycotting the Publishing Company.

Judge Carpenter, speaking for the Supreme Court of Connecticut, expressed the views of the court, as follows:

"Now, if we look at this transaction as it appears on the face of this information, we

shall be satisfied that the defendants' purpose was to deprive the Carrington Publishing Company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendant. The motion was a selfish one—to gain an advantage unjustly, and at the expense of others—and therefore the act was legally corrupt. As a means of accomplishing the purpose, the parties intended to harm the Carrington Publishing Company, and therefore it was malicious.

"The two alleged rights cannot possibly co-exist. One or the other must yield. If the defendants have the right which they claim, then all business enterprises are alike subject to their dictation. No one is safe in engaging in business, for no one knows whether his business affairs are to be dictated by intelligence or ignorance—whether law and justice will protect the business, or brute force, regardless of law, will control it; for it must be remembered that the exercise of the power, if conceded, will by no means be confined to the matter of employing help. Upon the same principle, and for the same reasons, the right to determine what business others shall engage in, when and where it shall be carried on, etc., will be demanded, and must be conceded. The principle, if it once obtains a foothold, is aggressive, and is not easily checked. It thrives on what it feeds, and is insatiate in its demands. More requires more. If a large body or irresponsible men demand and receive power outside of law, over and above law, it is not to be expected that they will be satisfied with a moderate and reasonable use of it."

Jersey City Printing Co. v. *Cassidy*, 53 Atl. Rep., 230 (N. J., 1902):

The Jersey City Printing Company filed its bill asking for an injunction against Cassidy and others.

Vice-Chancellor Stevenson in his oral opinion concedes that an employer has a right to arbitrarily "dictate" to his employees in regard to matters in respect of which their conduct ought, according to correct social and ethical principles, to be left entirely free. Likewise employees with certain limitations may dictate how their employer shall conduct his business, so long as the dictation of either is backed up only by a threat of an association of the relations of employer and employee, hence, he holds that employees may inform their employer that unless he does certain things to their liking they will "strike."

At page 232 of the report the court says:

> "But the difficult case presents itself when the workmen in combination undertake to interfere with the freedom of action on the part of other workmen who naturally would seek employment where they, the workmen in combination, desire and intend that no man shall be employed excepting upon their terms. The difficulty is in perceiving how molestation and annoyance, not of the employees of a complainant, but of persons who are merely looking for work, and may become employees of the complainant, can be erected into a legal or equitable grievance on the part of the complainant. But the difficulty is still further increased where the possible employees make no complaint to any court for protection, and the conduct of the molesting party does not afford a basis which the ancient common law recognized as sufficient to support an action of tort on their behalf, such as for an assault and battery, or a slander. Abusive language is not necessarily actionable at common law. If to call a man a 'scab' in the street, or to follow him back and forth from his home to his place of employment, was formerly not actionable on behalf of the victim of this petty annoyance, the problem is to understand how one who is merely the vic-

tim's possible employer can complain either at law or in equity; there being no actual contract for service, but only a potential one, interfered with."

Again at 234 of the report the court says:

"I think it is safe to say that, all through this development of strike law during the last decade, no principle becomes established which does not operate equally upon both employer and employee. The rights of both classes are absolutely equal in respect of all these 'probable expectancies.' An operator upon printing machines has the right to offer his labor freely to any of the printing shops in Jersey City. These shops may all combine to refuse to employ him on account of his race, or membership in a labor union, or for any other reason, or for no reason, precisely as twenty employees in one printing shop may combine, and arbitrarily refuse to be further employed unless the business is conducted in accordance with their views. But, in the case of the operative seeking employment, he has a right to have the action of the masters of the printing shops in reference to employing him left absolutely free. *If, after obtaining or seeking to obtain employment in a shop, the master of that shop should be subjected to annoyances and molestation instigated by the proprietors of other printing shops, who combine to compel, by such molestation and annoyance, this one master printer, against his will and wish, to exclude the operative from employment, this operative, in my judgment, would have a right to an action at law for damages, and would have a right to an injunction if his case presented the other ordinary conditions upon which injunctions issue.*"

Frank v. *Herold*, 63 N. J. Eq., 443; 52 Atl., 152, 1901:

A bill was filed against upwards of eighty defendants, asking an injunction to protect the complainants from an alleged conspiracy among the defendants to prevent certain operatives of the complainants from continuing to work for them.

From the statement of facts and opinion of the court the facts do not clearly appear. There is no doubt, however, that the complainant was the owner of what is known as the "Greater Barnert Mill," in Paterson, New Jersey, and the defendants were endeavoring to persuade various women employees from continuing in the employ of complainant.

The court says:

> "*The right of a master to have a servant continue in his employ without molestation or enticement by any third party is a property right, so recognized by the law, and well within the rule laid down by Vice-Chancellor Green in Barr* v. *Essex Trades Council*, where he shows that the right of a man to carry on his business is a property right."

Charles L. Flaccus v. *W. J. Smith, et al.*, 199 Pa., 128:

This was a case in which the facts very closely resemble the facts in *Hitchman Coal & Coke Co.* v. *Mitchell, supra.* It involved an effort by the American Flint Glass Workers' Union, affiliated with the American Federation of Labor, to compel and induce the complainant's employees to break their covenants or agreements not to become members of the union or connect themselves with the same, with the object of breaking down complainant's factory as a non-union factory either by preventing the operation of complain-

ant's works or compel joining the union. The court says:

> "*This is not a controversy between the employer and his employees, but between him and certain individuals associated as a labor union, unfriendly to the employment of independent labor, and seeking to induce the apprentices of the employer to violate the terms of their indentures with him.* No question is here raised by the employer as to what his employees may or may not do, and the complaint sets forth no misconduct by them for which relief is asked. The appellants, outsiders, having no connection with the business of the appellee, are charged with enticing and endeavoring to entice the young men employed by him to violate the covenants of their apprenticeships with him, and protection is prayed for against the threatened ruin of his business, as found by the court below.
>
> * * * * * * *
>
> "The appellee had an unquestioned right, in the conduct of his business, to employ workmen who were independent of any labor union, and he had the further right to adopt a system of apprenticeship which excluded his apprentices from membership in such a union. He was responsible to no one for his reasons in adopting such a system, and no one had a right to interfere with it to his prejudice or injury. Such an interference with it was an interference with his business, and, if unlawful, cannot be permitted. The court found that the interference was injurious to him, and if allowed to continue, would utterly ruin his business. The damages resulting from such an injury are incapable of ascertainment at law, and justice demands that specific relief be furnished in a court of equity."

VIII.

Brutality and bludgeon the form of picketing and persuasion practiced by respondents.

In this case the conduct of the respondents conspirators was so violent in its lawlessness, so brutal in its practice, that it comes within the class of cases requiring and justifying injunction because of the resort to intimidation, physical force and destruction. That the opinion and decision of the Circuit Court of Appeals should not in any happenstance fashion mislead this court into the thought or idea that this case involves interference and restraint only by peaceful picketing and peaceful persuasion, and to demonstrate to this court that a modification of the injunction such as was decreed by the Circuit Court of Appeals, not only is unjustified from the facts and proof in the case, but if adhered to, *would encourage and assure an immediate resumption of the force and violence practiced when interrupted by the restraining order of the District Court*, we bring to the attention of this court the evidence of brutality and thuggery which forced resort to the courts for protection.

As before adverted, the Circuit Court of Appeals in a rather colorless fashion did find that there was justification for the injunction against intimidation and force. Let us see what the evidence in the record is in support of the findings of the District Judge and in proof of the respondents' resort to the bludgeon as a means of peaceful persuasion and peaceful picketing.

A. Walcher testified as follows:

> "As works manager threats had been carried to me by third persons from the pickets

to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end. * * * (Printed Rec., 24.)

"Other men besides the defendant were engaged in picket duty around the plant. These pickets would stand around in groups of eight or ten, two and three groups. Some of these I recognized as machinists, others as workmen that had worked around Granite City at various times, various outsiders." (Printed Rec., 26.)

Steven Hafner testified as follows:

" * * * On April the 30th as I came to work to the plant I go down on Neideringhaus avenue alongside of the Wabash station. I saw Churchill, Gerlich, and Cook on Neideringhaus avenue that day. They was out on the walk about ten feet away from the track from the station there and jumped in front of me. They didn't say nothing, only Tom Churchill say, 'You can't go this way.' And I said, 'Yes, I can.' And he jumped on me and beat me up; I didn't see the two fellows coming behind; Tom Churchill jumped in front of me and stopped me and I didn't see the other two men come at all, and all at once I got hit in the face and all over, and then I went over to the cars; I couldn't hardly stand and braced up in a car; the time I was going over to the cars one fellow his name is McKenny he was going to get after me again and I said I wouldn't go into the plant; I was going back home; I was going to brace up over in the cars. I went home; couldn't go into the shop any more. I was feeling awfully dizzy all day long; still dizzy yet sometime on account of them hitting me. * * * (Printed Rec., 26.)

"Churchill, McKenny and Cook all hit me, they knocked me down. They hit me in the face; I don't know where they did hit me;

couldn't see fast enough how they did come on me, then I went between the cars and braced up a little and then I went back home." (Printed Rec., 27.)

Frank Hedstrum testified as follows:

" * * * On May 8th I saw them on Neideringhaus avenue by the Wabash depot. A bunch of about fifteen or twenty of them came in the direction of four or five of us calling us vulgar names and we went on past the depot on the left hand side of the shop on Neideringhaus avenue. The men at the depot followed us and commenced assaulting us. One of them hit me on the hand with a rock. As a result I was in a dazed condition and had to have a doctor care for my hand. On May 18 Ira Crawford and myself were walking to work about five o'clock in the evening.

"We were coming down the street when we were intercepted by some men at the corner of 21st and B streets, about 4½ blocks from the plant. There were about twenty-five men in the bunch. Some man whose name I do not know said, 'Don't go in to work.' And the next thing I remember I found myself getting up and nobody around, except some school children and Crawford. Crawford was getting up from the ground where he was knocked unconscious as well as myself, and this gang of twenty-five men were all gone. I was rendered unconscious by being struck over the head with some blunt instrument. The right side of my face was swollen from being hit with something on the jaw, it was all swollen and sore down to my collar bone. My head was swelled and sore also; there was a knot about the size of a pigeon egg on the side of my head.

"On the morning of May 14 I saw Ted Ishman close to the Wabash depot, he said to me that we would continue going in to work until we got our heads knocked off." (Printed Rec., 27.)

Ira Crawford testified as follows:

"I have been working for the American Steel Foundries about six or seven weeks, running a crane on the night shift. On the morning of May the 8th, as I was coming from work I saw a bunch of about twenty men near the Wabash depot. I recognized Ishman and Dangles in the crowd. The crowd followed us around the depot calling us vile names and the next thing I knew there was a fight come off. They hit us, struck me in the back with something and on the arm, and struck at me at different times.

"On May 18 I left the house about a quarter to five o'clock with Hedstrum. The only man that I recognized in that crowd was Dangles. They jumped on to us and beat me up with a club of some kind; hit me on the head; hit me on the back with a brick and I don't know what else. I was knocked unconscious and my head cut open. I don't think I was unconscious long. When I came to I saw men running near C. street towards town. As a result of this assault I couldn't work for two weeks and was treated by a doctor. My face was cut and my head cut and bruised. My left arm was so I couldn't use it and it still bothers me." (Printed Rec., 28.)

W. C. Quinn testified as follows:

"* * * When I finished my day's work on night of May the 13th I and eight others left the plant about eight minutes to six and walked out Neideringhaus avenue across the track and past the depot. We passed Ted Ishman and Galloway at the depot with four or five other fellows, and they said, 'There they go,' and at the same time Galloway drops his hand and we walked up the street. We walked up the street two or three hundred feet and a gang of men about sixty-five or seventy of them came around the corner from

behind a brick pile. From the other side of the street was about a likewise number; at the head of the bunch on this side of the street was Hartbeck, and just as we got from about twenty feet from the street car track this fellow hit Kelly in the face and at the same time he says, 'There, you scabbing s— of b—; don't let him get away from you'; and I tried to cut across the field and they shillalahed me with bricks and likewise the rest of them. The bunch that was at the station came from behind. I was struck by these brick bats in too numerous places to mention. I was struck mainly on the back and on the side of the left temple, and on the right jaw, also on the arms. I was knocked unconscious for about fifteen or twenty minutes and when I regained consciousness all of these men had disappeared. As a result of this I couldn't perform my duties for the next week and have had a continuous headache ever since. I was never troubled with headaches before.

"On May the 6th I saw Ted Ishman on the corner of Eighteenth street and he told me if we continued to work down there we would get hurt. He said there wouldn't be any of us go in there the following Monday if they had to kill us all. I started sleeping in the plant on the night of the 14th and have slept there up until last Monday. I slept on a board the first couple of nights and then on a cot. I slept in the plant because I didn't like to battle my way through all the time. I was followed continually across the river and on this side of the river, too. On one occasion I was followed by a man whose name I do not know and I caught six different street cars trying to escape and finally I caught a taxicab and got away from him. On the following day I met this same fellow and two others on the corner of Fifteenth and Chestnut streets in St. Louis. This fellow came in front of me and two fellows behind me and just as he got to me he said, 'This is the scabbing b——d,' and struck at me, and the two

fellows from behind rushed up at me and I had to defend myself and I knocked one man down and got the other fellow down and the other fellow ran." (Printed Rec., 29.)

Frank Melton testified as follows:

"I went to work for the complainant on April the 13th, worked about ten days and was off then until the 7th of May when I again went to work. That day I went across Neidringhaus avenue on the south side of the plant to Compton's Restaurant; while I was in there this fellow here (pointing out defendant Gerlich in the court room) come up to me. He was the leader of these fellows. Guess there were twenty of them in there while I was eating dinner and they surrounded me. He came up and commenced to bulldoze me, and said, 'Say, you, don't you know there is a strike on here?' He told me if I didn't stay out of that shop they would beat my damned head off and I sat and eat awhile, and I told them I thought I would quit that night beings they were getting so strong with it, and they kept getting louder all the time and getting closer to me all the time. When I told him I would quit that night, he said, 'You won't do it no such a damn thing; you have seen your last time in that shop. You are quitting right now.' There was a heat to come down in a few minutes; they had me tied up and wouldn't let me in; I was pouring mad. I told them I had a motorcycle in the shop and would have to get that out, so they gave me fifteen minutes to get out of there, and on account of their threatening attitude I was afraid to go back there to work. I went to work and worked one day after that and that night they jumped me in East St. Louis right near by home. I don't know who jumped me. One of them said, 'There is that crane man at Granite City.' One threw a brick but never hit me, and one ran over and knocked me down; don't know who it was, a hammer or

something he had in his hand; hit me in the back and knocked me down; I was laid up for over a week; couldn't use my back, and struck me in the face and I was cut on the arm. This happened about the 14th of May. I don't know who struck me, it was done after dark and I couldn't very well recognize who it was.

"I was satisfied with the terms of my employment and I am willing to work there, but I am afraid to work" (Printed Rec., 30).

William Francis testified as follows:

"* * * When I left the plant on the night of April 29th I saw Tom Churchill about eight feet from the depot with ten or twelve other men; among them was Wm. and C. Thornberg. They were all in the gang together. Churchill said, 'If we didn't stay out in a decent manner they would make us stay out.'

"On the following morning I went to work with Steven Hafner. We met Thornberg and Churchill and they took Steve away from me and kicked him and beat him in the face with their fists and feet, they then ran away.

"I saw the Blacksmith Freddy that morning. I saw him get whipped; knocked down. He come on the north side of the depot and Churchill, the two Thornbergs and three or four other fellows were on the south side. They headed him off around the car and they commenced whipping him and knock him down and beat him. There were about nine or ten of them in the assault. Freddy was unable to work and went home.

"On the 13th of May there was trouble on Neideringhaus avenue about a half a block from the plant. There were nine men with me and I seen a world of men coming three directions. Some from behind the stamping works, south of the stamping works; some was coming north and when we passed by a gang at the depot we were in the middle of the three gangs. They commenced throwing bricks. I recognized two or three standing

around there. Bricks was being thrown so fast I got behind a post. As I was going by the depot I recognized two or three of them. I recognized Churchill, Hartbeck and Galloway. Galloway was at the depot. A bunch of these men came in from behind us after we got past the depot. I saw workmen with me that were struck with bricks. A man got knocked down with a brick; one got hit in the ear with a brick. Mr. Quinn got knocked flat down unconscious. Mr. Patty over there got knocked down. It lasted about ten or fifteen minutes and then the gang run away in different directions. I got behind a post and didn't get a scratch.

"Freddy was about eighty or ninety feet from the works when he was assaulted. Churchill and McKenny assaulted him. I don't know what Freddy said. I was about twenty feet from them. They did not molest me. Freddy didn't strike them.

"Churchill and Hartbeck was in the fight on May the 13th. Don't know how many men were there; there was a world of them. I saw this the two fellows before the big crowd come up there, but the other gangs hadn't met us. And the crowd at the depot came up behind" (Printed Rec., 31).

J. E. Bell testified as follows:

"I am working for the Steel Foundries as a crane man. I was working there on the 13th of May. On leaving our work eight or nine of the workmen went up Niederinghaus avenue together. A bunch of men came from behind the stamping works, one came back of us and one from the side; kind of corralled us, threw bricks and everything at us. I was struck in the back and arms with bricks. About the 8th or 9th of May I had a talk with McKenny. He told us if we didn't quit working they would cripple us so that we couldn't get there the next Monday morning. I have been satisfied with the terms of my employment there at the plant" (Printed Rec., 32).

Edwin Baker testified as follows:

"I run the Royal Hotel in Granite City. I draw my trade mostly from the working people, and some of the employees of the complainant board with me. I know who the colored porter is that works for the complainant, he comes to my place for meals. On May 9th he came to my hotel with an order for two meals from officials at the complainant's plant. I packed them in two baskets and a bucket of coffee and handed them to him. He left my place and in about fifteen minutes came back as hard as he could run; ran in the restaurant and through kitchen where I happened to be. He did not have the baskets with him at that time.

"About three minutes after the porter got there three men came into the place. I didn't know any of them; the spokesman said his name was Harris. He asked me if I was feeding men from the American Steel Foundries. I told him that I was and they told me that if I didn't quit feeding them they would ruin my business and see that I didn't get any more union men" (Printed Rec., 33).

O. P. Floyd testified as follows:

"I know the colored man, the porter at the plant. I sent him to this hotel to get those meals. I saw him coming back to the plant. As he was on the tracks coming to the plant he had the two breakfasts I sent him for in a couple of ordinary market baskets. At this point he was stopped by Churchill, Gerlich and two other men whose names I do not know. They forcibly jerked the baskets away from him and threw them on the tracks and kicked the contents of the baskets over the tracks and broke up the dishes and the negro went back the other way. He didn't come to the plant at all" (Printed Rec., 34).

Valley Crabtree testified as follows:

"I have worked for the complainant continuously since March 29th. On May 8th I left my work about 7:15 in the morning to go home; Hedstrum and Crawford, fellow employees, were with me. As we were going on Niedringhaus avenue near the depot I met a bunch of about fifteen assaulters. I only knew Ishman and Warden in the bunch. They come up in front of us and called us vile names; whether they were addressed to me or not I don't know; never had anything said to me before. They followed us in around the depot and the next I knew Mr. Ishman and another fellow struck me with their fists. The fight started and lasted just a few seconds and the policeman came along and arrested us three employees, Mr. Ishman and another gentleman.

"I had no other trouble. I am a furnace helper in the plant and satisfied with my employment there" (Printed Rec., 35).

Thos. Cantrell testified as follows:

"I am working for the complainant, starting there May the 13th. I left the plant that night about 6:10 o'clock, and when I got down about a half a square from the Wabash Depot it seemed to me there were about two hundred men surrounded us. I recognized one man, Ted Ishman. I saw him throw a brick and strike Mr. Stark with it. Stark was covered with blood; I took him across the street and met four other guys, but I can't identify them; they started hurling bricks at me; some hit me on the back and I made my get-away towards the plant. I stayed in the plant until about 8 o'clock and then four officers escorted us to the Royal Hotel. I went back to work and the next morning and for five or six days slept in the plant. I slept on tables until they got cots" (Printed Rec., 35).

Adolphus Hileman testified as follows:

"I started to work for the complainant along the first part of April and quit working April 25. On the evening of April the 24th I saw quite a crowd; Lamb and Ishman was with them. They asked me to stay out, that there was a strike on there; I told them I would go in and pour the heats and then come out, and a fellow said, 'Go on in and scab then and then we will catch you when you come out.' On the evening of April 24 I was met by Ishman, Holmes and Paddey about six blocks from the plant. They said the machinists called a meeting and decided to get everybody that went in there and knock their blocks off and I had better stay out. Paddey said the machinists would do that; they didn't say they would do it. On April 25 I saw Horace Howard and Harry McKenny. I was on the inside of the fence talking to them through the fence. When I first saw them I was sitting on the water tank by the fence about forty feet from the gate. They told me I didn't do the right thing by staying in there and scabbing; I ought to come out. I quit working there that day because they made those threats and I didn't care to be in the trouble if there was any trouble. I was satisfied with my employment, satisfied with the terms of it and had no trouble with the company at all" (Printed Rec., 37).

Arthur Gordon testified as follows:

"I am working as a craneman for the complainant; started to work on May 6th. On the evening of May 13th as I left my work I saw some of the pickets at the Wabash Depot, and when I got a little closer they started to follow behind us, and some coming up the same side of the street to meet us, and some coming from behind the stamping works, I got knocked down to the ground and they started to kick me with their boots. I don't

know what I was knocked down with; it was from behind. There was a pile of bricks there. I was kicked in the forehead; on my head; had my ribs black and blue and bandaged up for about two weeks. I went to the surgeon of the plant and he bandaged my ribs. I had a big lump on my forehead. I was pretty sore; couldn't hardly breathe at all and was affected for nearly three weeks. After I was assaulted I made for the street car and got on it; they threw a pile of rocks; they didn't hit me, but hit the street car. I don't know any of the names of the men in the bunch.

"Before this I had been talked to by Ted Ishman; he stopped me and told me if I didn't quit going in there they would put me out of commission. I told them I was going to work anyhow, and he said there would be none of us in the plant on Monday. I slept in the plant at nights for about a week. The first two nights I slept on a plank; after that on a cot" (Printed Rec., 38).

Oscar E. Hall testified as follows:

"I am master mechanic at the plant of the complainant and have been since May the 1st, 1913. * * *

"About the 24th or 25th of April I had a conversation with the defendant Lamb. He said to me, 'We don't like the way you have treated our boys down here and we just come down to raise a little hell.' Just before he said this he was with a party of five or six men.

"Question by the Court: If men were unmolested would you have any trouble filling all the places you want? A. I think not.

"Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none." * * * (Printed Rec., 39).

Charles Fortner testified as follows:

"I am working in Alton, but on April 14 worked for the complainant, worked there from April the 6th until April the 25th. I know Holmes, Ishman and Lamb; on the evening of April 23, I was going home, I met them about one hundred fifty feet from the plant. They asked me if I knew there was a strike on and I told them I did not; they told me there was and the best thing was to keep out of there and if I didn't they would make me. Later on I got word if I didn't cease work I would get my head beat off. I quit work on the 25th of April because I was afraid they would carry their threats into execution and beat my head off, and didn't want to get into trouble one way or the other" (Printed Rec., 42).

Fred Stark testified as follows:

"I applied for work at the complainant's plant about four o'clock in the afternoon of May the 13th and started to work on the 14th. As I was leaving the plant about six o'clock on the evening of the 13th I went straight over the tracks to the Wabash depot, turned there and went up that street and started toward the street car; got half way up between the depot and the street car and was surrounded by about two hundred men and somebody got behind me and hit me in the ear with a rock. It busted my ear. I feel the effects at the present time and I believe it is broke. After I was hit I started down the street back of the plant. I didn't know anybody in the crowd only by having them pointed out to me. That red-headed man back there in the court-room I saw there. I don't know his name. He tried to stop me down by the depot as I was coming back. I pulled out my pocket knife and he jumped aside. I left the plant that night between eight and nine o'clock and came back the next morning at four. The regular time to go to work was seven o'clock.

After that night I slept in the plant on a pattern table" (Printed Rec., 42).

Harry McKenny testified as follows:

"I live in Granite City and am a steamfitter and belong to one of these unions. * * *

"Yes, sir, I assaulted one of the fellows there. Churchill stopped him one morning and was talking to him and I come up and asked him where he was working and he said he was going in there to work; I told him to stay away, and he said, 'You G—d d—n son of b——, I will work where I please,' and I hit him. We were standing at the south end of the depot; me, Churchill and some other fellow. I never tried to stop anybody from going into the plant by force. I never assaulted nobody. I talked to them; tried to talk to them in a good way" (Printed Rec., 51).

Is there any doubt as to the full justification of the District Judge in granting an injunction in the broad terms provided in the decree?

I X.

The "Clayton Act", which became law October 15, 1914, is not applicable nor available against petitioner.

On one of the former oral arguments counsel for petitioner, shortly before the close of his argument, was asked by one of the justices, if he had given consideration to the effect of the "Clayton Act" upon the case. Counsel replied that he had not, that the question had not theretofore been raised either in the District Court or in the Circuit Court of Appeals, nor in this court. It being apparent that the "Clayton Act" is being given consideration in this Court in connection with the decision in this case, we will address ourselves thereto, and demonstrate, we believe,

the inapplicability and the unavailability of that act in derogation of any of the rights of the petitioner as claimed herein.

(a) The final decree granting the petitioner a permanent injunction was entered on the *9th day of June, 1914.*

The legislation known as the Clayton Act became law on *October 15, 1914.*

It will be noted that the rights of the Petitioner by final judgment and decree were definitely and formally fixed and vested *before the Clayton Act became law.*

Before discussing the Clayton Act and its general applicability to the facts and law of the case, we desire to present the point that no retroactive effect can be given to the Clayton Act so as to affect the final decree and judgment entered prior to its enactment.

This proceeding is not one involving a relationship between an individual and the federal government or the state government or the public as such, in any way whatsoever. It is a controversy between private parties, namely, the petitioner and the respondents. While it may be contended that legislation subsequent to adjudication in proceedings between public bodies or between an individual and the public, because each one doing business with the federal government or the state government is more or less subject to future legislation affecting the relationship, no such rule can apply in a controversy or proceeding between private parties.

This court passed upon that question in the case of the *State of Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S. 421. The Court says at page 431:

> "Now, we agree, if the remedy in this case had been an action at law, and a judgment

> rendered in favor of the plaintiff for damages, the right to these would have passed beyond the reach and the power of Congress. It would have depended, not upon the public right of free navigation of the river but upon the judgment of the Court. The decree before us so far as it respect the costs adjudged stands upon the same principles and is unaffected by the subsequent law."

That case involved, as the court will note, matters relating to a public improvement constructed and maintained under acts of Congress and therefore involved a controversy between an individual and the federal government, and in that respect differs from the instant case; and yet, even in that case, the Court said at page 431:

> "But it is urged, that the act of Congress cannot have the effect and operation to annul the judgment of the Court already rendered, or the rights determined thereby in favor of the plaintiff. This, as a general proposition, is certainly not to be denied, *especially as it respects private rights of parties. When they have passed into judgment the right becomes absolute, and it is the duty of the Court to enforce it.*"

In the dissenting opinion of Mr. Justice Grier is the following at page 449:

> "I concur with my brother MacLean that Congress cannot annul or vacate any decree of this Court; that the assumption of such power is without precedent, and as a precedent for the future it is a dangerous example."

A final judgment or decree is property just as much as any other form of property. The right of property and the protection thereof is a vested estate and such judgment or decree should not be

subject to subsequent legislation, especially if such legislation involves not only remedies but rights. In this case both are involved.

Suppose there had been no appeal from the final decree in this case and a violation of the permanent injunction had occurred and the defendants charged with such violation were brought to the bar of the Court for contempt, could defendants so charged relieve themselves by pleading in defense the subsequent enactment of the Clayton Act? Can Congress affect or stay the enforcement of a subsisting order, injunction or decree of a Court having jurisdiction of the parties and the subject matter? And, indeed, as applied to the case at bar, can Congress affect the subsisting order, judgment or decree of a Court of competent jurisdiction, having jurisdiction of the persons and subject matter in a suit involving the construction and application of the statutes of the State of Illinois?

Besides, there is nothing in the Clayton Act making the provisions thereof operative retrospectively. Not only is there a presumption that the law was to become operative prospectively but to have it otherwise would require a clear and unmistakable expression of legislative intention to that effect. There is nothing in the Clayton Act to warrant the application or operation thereof, other than prospectively.

In the case of *Memphis* v. *United States*, 97 U. S. 293, this Court said at page 296:

> "In this case the relator recovered his judgment against the city on the 16th of March, 1875. Into that judgment his contract was merged, and it no longer had any legal existence. If, as asserted by Blackstone, the judgment was itself a contract, the remedies for its enforcement, existing at the time when it was recovered, could not be taken away

> either by direct legislation, or indirectly, by repealing the law which gave those remedies. And if the judgment may not be considered a contract of record, still the vested rights it gave to the relator, whatever they were, are equally secure against legislation invasion."

and on page 298 this Court quoting *Fisher's Negroes* v. *Dabbs* (6 Yerg. (Tenn.) 119), said:

> "A distinction between the right and the remedy is made and exists. But where the remedy has attached itself to the right, and is being prosecuted by due course of law, to separate between them and take away the remedy is to do violence to the right, and comes within the reason of that provision of our Constitution which prohibits retrospective, or, in other words, retroactive, laws from being passed, or laws impairing the obligation of contracts."

In the case of *Livingston* v. *Livingston*, 173 N. Y. 377, the New York Court of Appeals involving a similar question said, at page 381:

> "By the decree, in this action, the obligation, before resting upon the husband for the support and education of the children and for the support of his wife, was changed. It, thereafter, was made to rest upon the wife and the decree adjudged that the husband should pay to her a certain fixed sum of money in a certain manner, in lieu of his previous obligation. The judgment defined and created a new obligation on his part and as the amendment of the statute, necessarily, affected the wife's right to compel exact performance and bore upon the obligation, to her possible injury, it was obnoxious to the constitutional prohibition. It would be absurd to call it remedial, as affecting merely a remedy upon the decree. Even then, it would violate a substantial right of the plaintiff. It was, how-

ever, in fact, the impairment of, or interference with a vested right conferred by a final judgment. The plaintiff's protection in the enjoyment of her right under the decree is not, necessarily, referable to the prohibition in the Federal Constitution against the impairment of the obligations of contracts. It is not at all necessary, for the plaintiff's purposes, that the judgment of divorce should be deemed a contract. A judgment is not a contract, in the ordinary sense of an agreement reached between persons, to whose terms their mutual assent has been given, and it is in that sense that the word is used in the Federal Constitution. (*State of Louisiana* v. *Mayor of New Orleans*, 109 U. S. 285.) A judgment creates an obligation of the highest nature known to the law and it is enforceable against the judgment debtor as upon his promise to perform it; but that promise is only implied by law. The obligation is imposed; it is not assumed voluntarily. But a final judgment creates and vests substantial rights, and, if the statute were allowed this retroactive effect, a new stipulation would be imported into it, in effect, that the defendant's obligation might be changed upon showing subsequently occurring facts."

In the case of *Humphrey* v. *Gerard*, 83 Conn. 346, the Court said at page 352:

"The most apparent answer to this contention is found in the fact that the statute is not a retrospective one. The presumption is that statutes are intended to operate prospectively. They should never be construed as having a retrospective effect unless their terms show clearly and unmistakably a legislative intention that they should so operate."

See case of *Strafford* v. *Sharon*, 61 Vt., 126. The Court at page 130 said:

"The Constitution of the United States prohibits the States from passing any *ex post facto* law, or any law impairing an obligation of a contract (Art. 1, Sec. 10); so that if the obligation of the Town Strafford to contribute towards the building and maintaining of the bridge in question rested in contract, the legislature could not pass any law that would release the parties from its performance. It is a distinction thoroughly settled by a substantially uniform course of decisions in this and other states, and in the Federal courts, that while the legislature of a state may make laws affecting the remedy for the enforcement of a contract, altering its character or substituting one remedy for another, yet it cannot, by reason of the Constitutional prohibition, deprive the party of all remedy. If this cannot be done when the right exists in the form of a simple contract, express or implied, much less can it be done when that right has been ascertained and established by the judgment of a court of competent jurisdiction.

* * * * * *

"Nor can it be urged in opposition to the foregoing considerations that there is but the substitution of one remedy for another without involving the impairment of any contract right. Wherein consists this change of remedy? It is in substance, the substitution of one for another party petitionee. The burdened town is now to seek its remedy from the state, while before it was obtained from the benefited town or towns. *But in the case before us the petitionee has already sought and obtained its remedy, in the form of a judgment against the petitioner, under the law as it stood at the time when the action was brought and prosecuted; it has fully perfected its right under the law. Shall the petitionee now be deprived of this established and adjudicated right, and sent back to begin de novo to again establish the same right, but against another party? Clearly this would be uncon-*

stitutional. The same right might, or might not be established, and a substantial similar relief obtained in the end, but the party would be driven to another action, with all its expense, delay and uncertainty, the benefit of the expense incurred in the former proceeding lost to it, and compelled to fight the battle all over again, and against another party, before it could, if successful, in the end reach the same or a similar result as the one already reached in strict accordance with the law as it stood at the time, and by the law made a final settlement of the controversy, save for the periodical review provided for. And when all this was done, it might be that a new law would have been passed, relegating the party to still another remedy." (Italics ours.)

Also Merchants Bank *v.* Ballou, 98 Va. 112 (page 117):

"There can be no doubt that a judgment is such a vested right of property that the legislature cannot, by a retroactive law, either destroy or diminish its value. Murphy *v.* Gaskins, 28 Gratt. 207, 222; Ratcliffe *v.* Anderson, 31 Gratt. 105; Gilman *v.* Tucker, 13 L. R. A. 304 (*N. Y.*).

"In the case last cited, the power of the legislature to pass retroactive legislation affecting a judgment is denied, and, in discussing the subject, it is said: 'We must bear in mind that a judgment has been rendered, and the rights flowing from it have passed beyond the legislative power, either directly or indirectly to reach or destroy. After adjudication, the fruits of the judgment become the rights of property. These rights become vested by the action of the court, and were thereby placed beyond the reach of legislative power to affect.' * * *

"It is, however, contended that the effect of the statute in question is not to impair the validity of the judgment, but only to modify the remedy for its enforcement. In other words, that, though the judgment itself is a

vested right that cannot be impaired or diminished by a retroactive law, yet the lien is not a vested right, but only a remedy provided for enforcing the judgment, which can be taken away by such a law. This position is not tenable. The right to the lien upon the debtor's real estate is, in many cases, the sole inducement to the credit, which constitutes the basis of the judgment. Without the benefit of that lien, guaranteed by the law at the time the judgment is taken, the credit would not have been given.

* * * * * * *

"Judge Christian, in delivering the opinion of the court in the Homestead cases, says: 'Nothing can be more material to the obligation than the means of its enforcement. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which are guaranteed by the Constitution against invasion. The laws which subsist at the time and place of making a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to and incorporated in its terms. It is competent for the states to change the form of the remedy, or to modify it otherwise as they may see fit, provided that no substantial right secured by the contract is thereby impaired. But any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution." 22 Gratt. 288.

In the case of Edwards *v.* Kearsey, 96 U. S. 595, this Court, in our opinion, has already definitely disposed of this question. The subject matter was there fully and elaborately discussed, and Mr. Justice Swayne, in delivering the opinion of the Court dealt with the subject in all its aspects, including the application of the Constitutional inhibition against impairment of contract not only with ref-

erence to the rights under the contract, but also to the remedies flowing therefrom.

In the instant case it may be claimed that the "Clayton Act" only affects the remedy and not the right of petitioner. Any such interpretation in our judgment is erroneous. If the "Clayton Act" is to be considered as having any effect upon the final decree for permanent injunction, then it might be contended there would be an abridgment of the rights of the petitioner flowing from the remedies available to the petitioner under the final decree. But, assuming that the final decree for permanent injunction constitutes a vested right in petitioner (and this we believe cannot be successfully assailed), we insist with confidence that the remedy available to the petitioner on this vested right is one that could not be impaired by the enactment of the "Clayton Act" which became law October 15th, 1914, as against the final decree entered in the case on June 9th, 1914.

This Court, in this case of Edwards *v.* Kearzey, *supra,* in our judgment, definitely decides the inapplicability and unavailability of the "Clayton Act," even insofar as it affects the remedy accruing to the petitioner from its final decree for permanent injunction. On page 600, Judge Swayne said:

> "The obligation of a contract includes everything within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in the view of the law, ceases to be, and falls into the class of those 'imperfect obligations,' as they are termed, which depend for their fulfilment upon the will and conscience of those upon whom they rest. *The ideas of right and remedy are inseparable. 'Want of right and want of remedy are the same thing.'* 1 Bac. Abr., tit. Actions in General, letter B."

On page 601, the Court quoted from Green *v.* Biddle (8 Wheat. 1), and said, touching the point here under discussion:

> "'It is no answer, that the acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much a violation of the compact as if they overturned his rights and interests.
>
> "'One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation,—dispensing with any part of its force.' Planters' Bank *v.* Sharp *et al.*, 6 How. 301."

The Court further says, 601 *et seq.*:

> "Let us suppose a case. A party recovers two judgments,—one against A., the other against B.,—each for the sum of $1,500, upon a promissory note. Each debtor has property worth the amount of the judgment, and no more. The legislature thereafter passes a law declaring that all past and future judgments shall be collected 'in four equal annual instalments.' At the same time, another law is passed, which exempts from execution the debtor's property to the amount of $1,500. The court holds the former law void and the latter valid. Is not such a result a legal solecism? Can the two judgments be reconciled? One law postpones the remedy, the other destroys it; except in the contingency that the debtor shall acquire more property,—a thing that may not occur, and that cannot occur if he die before the acquisition is made. Both laws involve the same principle and rest on the same basis. They must stand or fall together. The concession that the former is invalid cuts away

> the foundation from under the latter. If a State may stay the remedy from one fixed period, however short, it may for another, however long. And if it may exempt property to the amount here in question, it may do so to any amount. This, as regards the mode of impairment we are considering, would annul the inhibition of the Constitution, and set at naught the salutary restriction it was intended to impose."

Judge Swayne, in the final summing up of the decision of the Court says, on page 607:

> "The importance of the point involved in this controversy induces us to restate succinctly the conclusions at which we have arrived, and which will be the ground of our judgment.
>
> "The remedy subsisting in a State when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is, therefore, void."

Mr. Justice Pitney, in the dissenting opinion in Paine Lumber Co. *v.* Neal, *supra,* dealing with the point made in that case urging a retrospective effect of the Clayton Act, says on page 483:

> "Aside from their rights under the Act of 1890, I think appellants are now entitled to an injunction under Section 16 of the Clayton Act—the case clearly being within the terms of the section—notwithstanding the act took effect after the final decree in the District Court. In an equity suit for injunction the reviewing court should decide the case according to the law as it exists at the time of its decision. This is not giving a retrospective effect to the new statute, for the relief granted operates only *in futuro.*
>
> "The suggestion, in behalf of defendants, that Section 6 of the Clayton Act establishes

a policy inconsistent with relief by injunction in such a case as the present, by making legitimate any acts or practices of labor organizations or their members that were unlawful before, is wholly inadmissible. The section prohibits restraining members of such organizations from 'lawfully carrying out the legitimate objects thereof'. What these are is indicated by the qualifying words: 'instituted for the purpose of mutual help, and not having capital stock or conducted for profit'. But these are protected only when 'lawfully carried out.' The section safeguards these organizations while pursuing their legitimate objects by lawful means, and prevents them from being considered, merely because organized, to be illegal combinations or conspiracies in restraint of trade. The section, fairly construed, has no other or further intent or meaning. A reference to the legislative history of the measure confirms this view. House Rep. No. 627, 63d Cong. 2d Sess., pp. 2, 14-16; Senate Rep. No. 698, 63d Cong., 2d Sess., pp. 1, 10, 46. Neither in the language of the section, nor in the committee reports, is there any indication of a purpose to render lawful or legitimate anything that before the act was unlawful, whether in the objects of such an organization or its members or in the measures adopted for accomplishing them."

Can it be successfully claimed that the Clayton Act is available against petitioner because the order of the Circuit Court of Appeals for a modification of the final injunctive decree was entered after the Clayton Act became law?

It seems to us, the object of that Act is a complete answer.

It was intended to govern the acts and orders of Courts of original jurisdiction and proceedings at *nisi prius* and could not practically be invoked on appeal or review in some Appellate tribunal.

(b) We insist the Clayton Act for other reasons must be held to be inapplicable and ineffective.

That Act cannot be made applicable to the instant case, because *this is not a case involving or growing out of a dispute concerning terms or conditions of employment (a) between employer and employees, (b) or between employers and employees, (c) or between employees (d) or between persons employed and persons seeking employment.*

There was no strike at this plant instituted by the employees or with the authority of the employees.

There was no controversy or dispute between the petitioner and its employees. See testimony of Walcher, printed record, page 25: *"From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to the petitioner from any of the employes with regard to wages."*

Only two of the employees left the employ of the petitioner and neither because of any strike of the employees.

Churchill was one of the employees who left. He testified, printed Record, page 53:

> "At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had to take at the time being and I haven't had anything better since. I didn't get a better job. *I quit because these fellows asked me to go out."*

Cook, the other employee, leaving his employment, testified at page 56 of the Printed Record:

> "I am an electrician and belong to none of the unions. I worked at the plant about three

> weeks after it started up. * * * I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, *and I quit because they said there was a strike on.*"

No other employee out of the entire body of workmen left their employment.

The strike at the plant of the petitioner was instigated by the respondent, the Tri-City Central Trades Council, an utter stranger to the petitioner, as disclosed by the testimony on the hearing and the strike notice in the form of a handbill hereinbefore quoted.

That organization did not act or speak for the employees of the petitioner, nor had it authority to act for them nor was the strike instigated by that organization subsequently approved by the employees of petitioner. On the contrary the Tri-City Central Trades Council through its officers and agents, a stranger both to the petitioner and its employees, conspired to force the employees to violate their contracts and leave the employ of the petitioner, by arbitrarily instigating and wantonly prosecuting an unauthorized, illegal, brutal and criminal strike. See testimony of Walcher, Printed Record, page 41:

> "Earl Galloway was admitted to my office and told me there was a Committee that represented the labor organization; *I asked him if the Committee represented our employees and he said they did not*, and I told him we didn't recognize any labor organizations; we had never had any complaints or demands from any of our employees."

Earl Galloway, President of the Tri-City Central Trades Council testified, Printed Record, Page 44:

> "As Chairman I went in to see Mr. Walcher and stated the case to him. He said they didn't have any grievances there that he knew of, that none of his employees had said anything to him that they were dissatisfied; *he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions;* he stated that he would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievance to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back."
>
> "This was about the 20th or 21st of April. *It was reported back to the joint board and a strike was declared on the plant.* Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts, I believe."

c. Section 20 of the Clayton Act is further inapplicable to the instant case because of the facts disclosed in the record conclusively establishing that an injunction was necessary to prevent irreparable injury to property or to a property right of the petitioner and for which injury there was no adequate remedy at law.

The purpose of the strike instigated by the Tri-City Central Trades Council is indicated in the testimony of the defendant Cook at page 56 of the Printed Record as follows:

> "*I was working and combining with these other men for the purpose to keep those men out of the plant. I felt if I could persuade*

the men not to take the places of the strikers the Company would restore the wages. I was trying to make them restore the wages or close down the plant.''

A further indication of the purpose of this strike is disclosed in the brief of counsel for the respondent in answer to the petition for *certiorari* at page 35 as follows:

> *''And had not defendants been enjoined from doing peaceful picketing, we doubt if complainant would have been able to operate its mill even at such a reduced force as it is.''*

A further indication of the purpose of the strike is disclosed in the testimony of Mr. Walcher at page 30 of the Printed Record as follows:

> *''As works manager threats had been carried to me by third persons from the pickets to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end.''*

and again at page 30:

> *''I was told a statement had been made that the plant was going to be burnt.* The plant is of various construction, some combustible and some non-combustible. The frame of the plant is wood in a great many cases, and one of the large buildings is an entire wood building.''

On the trial no denial was made of the threat to destroy and burn the works of petitioner, either by any of the respondents, or by the witnesses testifying for respondents.

Of course the provisions of the second paragraph of Section 20 have relation only to the kind of cases and situations cognizable under the first

paragraph. This case not coming within the provisions of the first paragraph of Section 20 is therefore not subject to the admonitory inhibitions against the issuing of a restraining order or injunction set forth in the second paragraph.

(d) The "Clayton Act" not available because inapplicable to the facts proved in the instant case.

The effect of the Clayton Act upon cases arising out of "strikes" as developed by and applied to the given facts appearing has been considered in a number of instances in the Federal Courts. In considering the applicability of the Clayton Act from the view-point of the facts disclosed by the evidence at the hearing in the instant case, we ask consideration of the testimony of the various witnesses, excerpts of which appear hereinabove on pages 96 to 109 inclusive. Lawlessness, intimidation and brutality under the guise of "peaceful picketing" and "peaceful persuasion" are sought to be defended and exonerated by counsel for respondents. It is inconceivable that the "Clayton Act" under any possible circumstances could be successfully availed against a decree for permanent injunction and the enforcement thereof under the facts established at the hearing and which even the Circuit Court of Appeals admitted to have been lawless and subject to restraint by injunction.

We insist, however, that the "Clayton Act" not only is inapplicable in this case with reference to the acts of assault and violence and physical brutality, but also against picketing *per se*, unattended, if you please, by acts of physical violence. In support of our contention in this regard we call the Court's attention to the following cases de-

cided in the Federal Courts since the Writ of Certiorari in this case was granted:

See the case of *Montgomery* v. *Pacific Electric Railway Co.*, 258 Fed. Rep. 382. We ask the Court's attention to the language of the opinion at page 388, *et seq.* The Court says, p. 389 as follows:

> "That the order here appealed from accords with the decision in the case cited is expressly conceded in the brief for the appellants, where it is declared that—
>
> "The injunction approved by the Supreme Court in the Hitchman Case does the same violence to the provisions of the Clayton Act as does the order at bar."

And again:

> "Certain it is that the provisions of the Clayton Act and the decision in the Hitchman case cannot be reconciled."
>
> "Nor is it true that the Supreme Court made in the case cited no reference to the Clayton Act; for, notwithstanding the fact that that act was pressed upon its consideration, the court, in the course of its elaborate opinion, expressly declared it 'needless to say there is no act of legislation to which defendants may resort for justification.'"

See also the late case of *Dail-Overland Co.* v. *Willis Overland*, 263 Fed. Rep. (Advance Sheets May 6, 1920) 171. The Court says at page 185:

> "Complainant is not here seeking relief upon the same grounds which the Overland might occupy should it appeal to a court. Unless the law was modified by the passage of the so-called Clayton Act (Act Oct. 15, 1914, c. 323, 38 Stat. 730), it must be held that the complaint states a cause of action of conspiracy, reprehended by the Sherman Act of

July 2, 1890, c. 647 (Comp. St. Sec. 8820 *et seq.*) under the authority of Loewe *v.* Lawlor, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815, and Gompers *v.* Buck's Stove & Range Co., 221 U. S. 418, 31 Sup. Ct. 492, 55 L. Ed. 797, 34 L. R. A. (N. S.) 874. On page 438 of the latter decision (31 Sup. Ct. 497 [55 L. Ed. 797, 34 L. R. A. (N. S.) 874]) the Court says:

"'The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained. To hold that the restraint of trade under the Sherman Anti-Trust Act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined, would be to render the law impotent. * * * But the very fact that it is lawful to form these bodies [labor organizations], with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution, or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one.'

"The acts charged against the alleged co-conspirators in this case have been in contemplation as agencies to effect the conspiracy, and also committed to further that conspiracy, were morally much more reprehensible than those charged against the alleged conspirators in the cases cited; *also in the present case the labor defendants are charged with conspiring to induce the employees of the Overland to break their contracts with the latter.* Consequently the case is within the

scope of Hitchman Coal Co. *v.* Mitchell, and Eagle Glass & Mfg. Co. *v.* Rowe, reported in 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497 Ann. Cas. 1918B, 461, and 245 U. S. 273, 38 Sup. Ct. 80, 62 L. Ed. 286, respectively.

"Does the Clayton Act change the law in any way, so as to affect the application here of the cases above cited? We are unable to see that it does, for we see nothing in this case that brings into pertinency the statement with which section 6 of that act (Comp. St. Sec. 8835f) begins, 'that the labor of a human being is not a commodity or article of commerce'; nor are the other provisions of section 6 applicable here. We are not asked here 'to restrain individual members of such organizations [labor organizations and others named] from *lawfully* carrying out the *legitimate objects thereof*,' nor are we asked to declare the labor organizations named as defendants in this case 'to be illegal combinations of conspiracies in restraint of trade.' The things which the labor defendants are alleged to have in mind to accomplish the purposes of their alleged conspiracy, and the things which are alleged to have been done in furtherance of that conspiracy by way of overt acts, cannot, by the wildest stretch of imagination, be considered to be 'lawfully carrying out the legitimate object' of such organizations. Intimidation, violence, bloodshed, cannot be said to be lawful means to the effecting of legitimate objects of a labor organization, nor can it be said that the acts alleged to have been in contemplation and to have been put in practice as agencies of the alleged conspiracy were remotely within the privileges of peacefully persuading and lawfully assembling accorded to persons engaged in a labor controversy by section 20 of the Clayton Act (Comp. St. Sec. 1243d)."

See also Kinloch Telephone Co. *v.* Local Union No. 2, etc., *supra*. At page 320, the Court says:

> "Counsel for plaintiffs, to sustain their right to injunctive relief herein, rely largely upon the case of Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S. 229, 38 Sup. Ct. 65, 62 L. Ed. 260, L. R. A. 1918C, 497, Ann. cas. 1918B, 461. While the Hitchman Case was not decided until three years after the Clayton Act took effect, it was, however, begun seven years before the passage of that act. If the provisions of the Clayton Act passed under judgment in the Hitchman case, then plaintiffs have, upon the facts proven, clearly shown themselves entitled to the injunction for which they pray. But I cannot bring myself to conclude that the Supreme Court of the United States held the Clayton Act in judgment when it ruled the Hitchman Case. Judge Trieber seemingly held to the view that the Hitchman Case did not consider the Clayton Act. Kroger Grocery Co. *v.* Retail Clerks, *supra*. In his view I am constrained to acquiesce.
>
> "Many cases are urged upon my attention, which hold substantially to the view, so forcefully expressed in Atchison *v.* Gee (D. C.) 139 Fed. 582, that there can be no such thing as peaceful picketing, any more than there can be 'chaste vulgarity, or peaceful mobbing, or lawful lynching'; but of such cases it is only necessary to say that none of them held in judgment the provisions of the Clayton Act. See 24 Cyc. 838; Erdman *v.* Mitchell, 207 Pa. 79, 56 Atl. 327, 63 L. R. A. 534, 99 Am. St. Rep. 783; Franklin Union No. 4 *v.* People, 220 Ill. 355, 77 N. E. 176, 4 L. R. A. (N. S.) 1001, 110 Am. St. Rep. 248. See also Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., *supra*, at page 197 *et seq.*" See also Vonnegut Machinery Co. *v.* Toledo Machine & Tool Co., *supra*, at page 197, *et seq.*

It was proved beyond peradventure that the property and plant of petitioner were being injured and were imperilled by the acts of the respondents. Section 20 of the Clayton Act not only eliminates from its operation actions for injunction to prevent irreparable injury to property, but also to property rights. The opportunity and the right to carry on and conduct business is an established right and is a valuable property right. Interference with and invasion of this right legally pursued can be restrained even under the express language of Section 20 of the Clayton Act.

To carry on and operate its business, the petitioner required the services and labor of workers. The petitioner had the legal right to the enjoyment of the work and activities of the men employed by it, and any interference therewith was an illegal interference and was subject to injunction. Petitioner had the right to the performance of the employment contracts existing between itself and its employes and the effort of the respondents to interfere with the performance of these contracts and to force its employees to leave their work and the petitioner's service by initiating and carrying on a "strike" at the plant of the petitioner, was illegal and an unlawful combination and conspiracy to secure the violation of the employment contract between the petitioner and its employees, was injurious to the business and the property and the property rights of the petitioner and subject to injunction.

It is not necessary there should be or that there should be proved, time contracts between the petitioner and its employees. Employment at will is sufficient. The petitioner is legally entitled to the employment of his employees under employment contracts at will and to the benefits and

good-will resulting therefrom. See Hitchman Coal & Coke Co. *v.* Mitchell, *supra.*

We insist under the facts of this case the Clayton Act, especially under the rulings of this Court, can in no way affect the right of the petitioner to maintain the permanent injunction as awarded to it in the final decree entered in this case by the District Court.

X.

Under the decisions of this court the "Clayton Act" is inapplicable and unavailable in the instant case.

It is believed this Court has already decided that Section 20 of the Clayton Act is not applicable to cases such as the instant case. In the report of the case of *Paine Lumber Co.* v. *Neal*, 224 U. S. 459, the contentions and arguments of counsel for the respective parties disclose that the application of Section 20 of the Clayton Act was urged and resisted by respective counsel. The dissenting opinion of Mr. Justice Pitney, concurred in by Mr. Justice McKenna and Mr. Justice Vandeventer goes very fully into that question at pages 480 *et seq.* and we quote liberally from pages 483 *et seq.*:

> "The suggestion, in behalf of defendants, that Section 6 of the Clayton Act establishes a policy inconsistent with relief by injunction in such a case as the present, by making legitimate any acts or practices of labor organizations or their members that were unlawful before, is wholly inadmissible. The section prohibits restraining members of such organization from '*lawfully* carrying out the *legiti-*

mate objects thereof.' What these are, is indicated by the qualifying words: 'instituted for the purposes of mutual help, and not having capital stock or conducted for profit.' But these are protected only when 'lawfully carried out.' The section safeguards these organizations while pursuing their *legitimate* objects by lawful means, and prevents them from being considered, merely because organized, to be illegal combinations or conspiracies in restraint of trade. The section, fairly construed, has no other or further intent or meaning. A reference to the legislative history of the measure confirms this view. House Rep. No. 627, 63d Cong. 2d sess., pp. 2, 14-16; Senate Rep. No. 698, 63d Cong. 2d sess., pp. 1, 10, 46. *Neither in the language of the section, nor in the committee reports, is there any indication of a purpose to render lawful or legitimate anything that before the act was unlawful, whether in the objects of such an organization or its members or in the measures adopted for accomplishing them.*

It is altogether fallacious, I think, to say that what is being done by the present defendants is done only for the purpose of strengthening the union. Conceding this purpose to be lawful, it does not justify or excuse the resort to unlawful measures for its accomplishment. *A member of a labor union may refuse to work with 'non-union' men, but this does not entitle him to threaten manufacturers for whom he is not working, and with whom he has no concern, with loss of trade and a closing of the channels of interstate commerce against their products if they do not conduct their business in a manner satisfactory to him.*

And the suggestion that, before the Clayton Act, unlawful practices of this kind were usually and notoriously resorted to by labor unions, and that for this reason Congress must have intended to describe them as 'legitimate objects,' and thus render lawful what

before was unlawful, is a libel upon the labor organizations and a serious impeachment of Congress.

Nor can I find in Section 20 of the Clayton Act anything interfering with the right of complainants to an injunction. It refers only to cases 'between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions. These words evidently relate to suits arising from strikes and similar controversies, and the committee reports upon the bill bear out this view of the scope of the section. But this is not such a suit. There is no relation of employer and employee, either present or prospective between the parties in this case. Defendants who are employees are in one branch of industry in New York City; complainants are employers of labor in another branch of industry in distant States. Nor is there any dispute between them concerning terms or conditions of employment. Section 20 prohibits an injunction restraining any person 'from ceasing to patronize or to employ' 'any party to *such dispute,* or from recommending, advising, or persuading others by *peaceful and lawful* means so to do; * * * or from peaceably assembling *in a lawful manner, and for lawful purposes;* or from doing any act or thing *which might lawfully be done in the absence of such dispute* by any party thereto.'

Clearly, this provision is limited to the participants in a dispute of the character just indicated. And quite as clearly, only 'lawful' measures are sanctioned—that is, of course, measures that were lawful before the act. There is no grant, in terms or by necessary inference, of immunity in favor of a boycott of traders in interstate commerce, violative of the provisions of the Sherman Act, to which the Clayton Act is supplemental.'' (Italics ours.)

In the opinion of Mr. Justice Holmes written for the majority of the Court he says on this subject at page 471:

> "Personally I lay those questions on one side because, while the Act of October 15, 1914, c. 323, Par. 16, 38 Stat. 730, 737, establishes the right of private parties to an injunction in proper cases, in my opinion it also establishes a policy inconsistent with the granting of one here. *I do not go into the reasoning that satisfied me because upon this point I am in a minority.*" (Italics ours.)

From this expression it is clear that upon this particular question the majority of the Court concurs in the views expressed by the dissenting opinion of Mr. Justice Pitney.

It is not disclosed in the reports of these cases whether or not the applicability of the Clayton Act was presented to or urged upon the Court. It is fairly inferable, however, that such was the case. It would seem hardly possible that in a case so fully argued as Hitchman *v.* Mitchell, *supra*, the Clayton Act and its effect upon the case were not considered, especially since this Court had so fully considered the application thereof to similar facts in Paine Lumber Co. *v.* Neal, *supra*, and argued and decided before the decisions in Hitchman *v.* Mitchell, *supra*, and Eagle Glass & Mfg. Co. *v.* Rowe, *supra*. Indeed, the following expression appears in the opinion of Mr. Justice Pitney in the Hitchman case at page 251: "Needless to say there is no act of legislation to which defendants may resort for justification," as referred to in the case of Montgomery *v.* Pacific Railway Co., 258 Rep., page 389.

It is altogether possible, this Court having decided in Paine Lumber Co. *v.* Neal, *supra*, that the

Clayton Act could have no retrospective effect, no point was made on nor attention paid to, the Clayton Act and its possible effect in the cases of Hitchman *v.* Mitchell, *supra,* and Eagle Glass & Mfg. *v.* Rowe, *supra.*

The latest and most direct expression on the Clayton Act is the decision of this Court in Duplex Co. *v.* Deering, 254 U. S. 443. In our judgment that case is decisive upon the applicability and effect of the Clayton Act on cases arising under the facts and circumstances alleged and established in the instant case.

Section 20 of this Act is practically the only one pertinent to the instant case and in that regard Congress expressly limited its application to cases "between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law". With reference to this section this Court said in Duplex *v.* Deering, *supra,* at page 469:

> "This regulates the granting of restraining orders and injunctions by the courts of the United States in a designated class of cases, with respect to (a) the terms and conditions of the relief and the practice to be pursued, and (b) the character of acts that are to be exempted from the restraint; and in the concluding words it declares (c) that none of the acts specified shall be held to be violations of any law of the United States. All its provisions are subject to a general qualification respecting the nature of the con-

troversy and the parties affected. It is to be a 'case between an employer and employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment'."

This Court proceeds further to say, page 470:

"It is very clear that the restriction upon the use of the injunction is in favor only of those concerned as parties to such a dispute as is described. The words defining the permitted conduct include particular qualifications consistent with the general one respecting the nature of the case and dispute intended; and the concluding words, 'nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States,' are to be read in the light of the context, and mean only that those acts are not to be so held when committed by parties concerned in 'a dispute concerning terms or conditions of employment'."

Having reference to the interpretation given to this provision of Section 20 by the Circuit Court of Appeals, this Court said, page 471:

"The majority of the Circuit Court of Appeals appear to have entertained the view that the words 'employers and employees,' as used in Section 20, should be treated as referring to 'the business class or clan to which the parties litigant respectively belong'; and that, as there had been a dispute at complainant's factory in Michigan concerning the conditions of employment there—a dispute created it is said, if it did not exist before, by the act of the Machinist' Union in calling a strike at the factory—Section 20 operated to permit members of the Machinists' Union elsewhere—some 60,000

> in number—although standing in no relation of employment under complainant, past, present, or prospective, to make that dispute their own and proceed to instigate sympathetic strikes, picketing, and boycotting against employers wholly unconnected with complainant's factory and having relations with complainant only in the way of purchasing its product in the ordinary course of interstate commerce—*and this where there was no dispute between such employers and their employees respecting terms or conditions of employment.*"

In the instant case there was no dispute between the petitioner and its employees. There was no dissatisfaction or discontent on the part of the employees. The wages paid were announced and posted by the employer and freely accepted by the employees. There was no complaint made as to working conditions. There was no strike at the plant of the petitioner initiated by the employees.

The respondents, Tri-City Central Trades Council, and its officers and self-appointed Committee, none of whom were employees of the petitioner, represented, as they say, 37 different crafts and we dare say that not less than 30 or 35 of those different crafts were in no way related to the employees or the work of the employees of the petitioner. So far as the record disclosed but one of the crafts embraced in the number disclosed in the record had any relation whatever to the employees or the work of the employees, namely the Machinists' Union, of which Churchill said he was a member.

These respondents, unrelated by employment or by contract, express or implied, to the petitioner, sought to raise a controversy with the petitioner. The petitioner declined to enter into

controversy with the respondents, who admitted they neither were employees nor represented employees of the petitioner. The petitioner declined to discuss and enter into a dispute with these intruders and strangers. They arbitrarily and without request or authority or knowledge or consent of the employees of the petitioner initiated a strike at the petitioner's plant and sought to create a dispute between the petitioner and its employees. It did not succeed. It persisted in its efforts in this regard to the point of making it impossible for the employees to continue performing their contracts of employment with the petitioner or to continue in the employment and the performance of their duties and obligations as such employees without being subjected to intimidation, threats, insults, assaults, violence, thuggery and made the victims of bricks and bludgeon.

Did what happened in the instant case constitute, within the language of the Clayton Act a "case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of, a dispute concerning terms or conditions of employment"?

If not, and there can be no question that there was not such controversy and dispute, then clearly under the decision of this Court in Duplex Co. *v.* Deering, *supra*, the Clayton Act did not and cannot apply.

With reference to the nature of the construction and interpretation which should be given the Clayton Act in its application to cases of the kind as the instant case, the Court says, on page 471:

> "We deem this construction altogether inadmissible. Section 20 must be given full

effect according to its terms as an expression of the purpose of Congress; but it must be borne in mind that the section imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States and upon the general operation of the anti-trust laws, a restriction in the nature of a special privilege or immunity to a particular class, with corresponding detriment to the general public; and it would violate rules of statutory construction having general application and far-reaching importance to enlarge that special privilege by resorting to a loose construction of the section, not to speak of ignoring or slighting the qualifying words that are found in it. Full and fair effect will be given to every word if the exceptional privilege be confined—as the natural meaning of the words confines it—to those who are proximately and substantially concerned as parties to an actual dispute respecting the terms or conditions of their own employment, past, present or prospective. The extensive construction adopted by the majority of the court below virtually ignores the effect of the qualifying words. Congress had in mind particular industrial controversies, not a general class war. 'Terms or conditions of employment' are the only grounds of dispute recognized as adequate to bring into play the exemptions; and it would do violence to the guarded language employed were the exemptions extended beyond the parties affected in a proximate and substantial, not merely a sentimental or sympathetic, sense by the cause of dispute.

"Nor can Section 20 be regarded as bringing in all members of a labor organization as parties to a 'dispute concerning terms or conditions of employment' which proximately affects only a few of them, with the result of conferring upon any and all members—no matter how many thousands there may be, nor how remote from the actual conflict—

> those exemptions which Congress in terms conferred only upon parties to the dispute. That would enlarge by construction the provisions of Section 20, which contain no mention of labor organizations, so as to produce an inconsistency with Section 6, which deals specifically with the subject must be deemed to express the measure and limit of the immunity intended by Congress to be incident to mere membership in such an organization."

In other words, the Act being in the nature of class legislation, while giving to it all the effect intended, it should be limited in its construction to the specific parties and specific subjects expressly mentioned therein. Further in keeping with this subject of construction, we find this Court said on page 473:

> "The emphasis placed on the words 'lawful' and 'lawfully,' 'peaceful' and 'peacefully,' and the references to the dispute and the parties to it strongly rebut a legislative intent to confer a general immunity for conduct violative of the anti-trust laws, or otherwise unlawful.

The form and the substance of the injunction directed by this Court in that case embraces restraint such as was granted to the petitioner by the District Court and improperly and unwarrantedly directed to be modified by the Circuit Court of Appeals in the instant case.

As we understand the dissenting opinion of Mr. Justice Brandeis, it is contended by him and his associates in dissent that the Clayton Act is so broad and intended to be so broad as to comprehend, not only a controversy or dispute between the employer and the employee, but disputes and controversies between persons and organizations

other than the immediate parties to an employment and whose welfare may be influenced or affected by the success or failure in any dispute that may be instigated or inspired for their purposes, between employer and employees.

Mr. Justice Brandeis in his dissenting opinion says, page 487:

> "The Duplex Company contends that Section 20 of the Clayton Act does not apply to the case at bar, because it is restricted to cases 'between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment'; whereas the case at bar arises between an employer in Michigan and working men in New York not in its employ, and does not involve their conditions of employment. But Congress did not restrict the provision to employers and workingmen *in their employ*. By including 'employers and employees' and 'persons employed and persons seeking employment' it showed that it was not aiming merely at a legal relationship between a specific employer and his employees."

The activities of the Tri-City Central Trades Council cover and embrace the cities of St. Louis, Missouri, East St. Louis, Illinois, and Granite City, Illinois.

For purposes of analogy let us suppose that steel foundrymen employed in the City of St. Louis, Missouri, desire to secure an increase in their wages. The employers of these St. Louis foundrymen are unwilling to grant any increase. The officers of the Tri-City Central Trades Council desiring to force an increase in wages from the owners of the steel foundry in the City of St.

Louis, decide that in order to secure such increase for the employees there, it would be necessary to force increase in the wages of the steel foundrymen employed in the plant of the petitioner, the American Steel Foundries, operating and conducting its plant and business at Granite City, Illinois, because the petitioner has, if you please, the largest and strongest steel foundry plant within the three cities covered by the Tri-City Central Trades Council, believing that if they can force an increase in the wages at the plant of the petitioner, it would force the owners of the steel foundry plants in St. Louis, Missouri, to do the same. The relationship between the petitioner and its employees at this time is serene and satisfactory. There is neither dissatisfaction nor discontent amongst the petitioner's employees concerning their wages or working conditions. The wages and working conditions of petitioner's employees have not been complained of. The Tri-City Central Trades Council, to carry out its purpose to force an increase of wages of the employees of the St. Louis plant, decide to demand from the petitioner an increase in the wages of its employees. The officers of the Trades Council appoint a committee, none of whom is employed by the petitioner. This committee proceeds to petitioner's plant, seeks a meeting with the manager and demands from him an increase in the wages of its employees. This request comes to the manager like "a clap of thunder out of a clear sky." He is quite surprised. He has never heard of any dissatisfaction with the wages paid to the employees. There has been no complaint from its employees, either about wages or working conditions. He advises the chairman of the committee that the petitioner's plant is an open shop. He

is informed by the chairman of the committee that they are not employees nor represent employees of the petitioner. That it does not deal with or recognize unions. That he cannot discuss the matter of wages with this committee, but willing to discuss any question with his own employees. The committee thereupon for the purpose of accomplishing their desire to force an increase in the wages at St. Louis, and incidentally at Granite City, without the authority of the petitioner's employees, initiate a strike at petitioner's plant, print, post and distribute notices of the strike over its own name, and then for the purpose of carrying out its end, proceeds to do what the record here discloses was done.

As we understand the dissenting opinion of Justice Brandeis, and his associates in dissent, the purpose of the steel foundrymen employed in the St. Louis plant to secure an increase in their wages being lawful, and such increase being in the interest of the general welfare of men engaged in the steel foundry business, it would be lawful for the Tri-City Central Trades Council, under the circumstances appearing in the instant case, to initiate and conduct a strike at petitioner's plant as and in the manner herein disclosed, and petitioner would be helpless and powerless by reason of the provisions of the Clayton Act to prevent the injury inflicted by such strike and compelled to suffer damage and injury without recourse.

Does this not present a case covered by the dissenting opinion as expressed on page 487, as follows:

> "By 1914 the ideas of the advocates of legislation had fairly crystallized upon the manner in which the inequality and uncertainty

> of the law should be removed. It was to be done by expressly legalizing certain acts regardless of the effects produced by them upon other persons. As to them Congress was to extract the element of *injuria* from the damages thereby inflicted, instead of leaving judges to determine according to their own economic and social views whether the damage inflicted on an employer in an industrial struggle was *damnum absque injuria*, because an incident of trade competition, or a legal injury, because in their opinion, economically and socially objectionable. This idea was presented to the committees which reported the Clayton Act. The resulting law set out certain acts which had previously been held unlawful, whenever courts had disapproved of the ends for which they were performed; it was then declared that, when these acts were committed in the course of an industrial dispute, they should not be held to violate any law of the United States."

Is it possible that such doctrine can be sound law? Is it conceivable that Congress in enacting the Clayton Act intended any such consequences to flow from such acts? Can such a conspiracy both at common law and under the laws of Illinois be legalized by the Clayton Act? This Court in its majority opinion says "No" and we believe in the case at bar this Court will reaffirm the opinion of the majority in that regard.

XI.

Errors in Respondents' Statements and Quotations of the Evidence.

We informed counsel for respondents, in view of the number of printed briefs and arguments heretofore filed in this case, we deemed it advisable and proper to prepare and file a "Revised Brief and Argument", embracing the points and subjects submitted in the Briefs and Arguments heretofore filed. Counsel for respondents advised us that it would be impossible for him to follow our purpose in that regard. As this brief goes to print respondents' counsel advises us he will also prepare and file a revised brief and argument.

For the convenience of the Court in giving consideration to this case, we are filing this "Revised Brief and Argument", perhaps too long because of the quotations from decisions and the evidence. Nevertheless at the expense of time and brevity, by liberal quotations from cases cited and the record we hoped to enable the Court the easier and the quicker to see and appreciate the value and relevancy thereof.

In the printed briefs and arguments heretofore filed by counsel for respondent we noticed and found a number of errors in and incorrectness in statements of the evidence to which the attention of the Court was called by us in some of the printed briefs and arguments heretofore filed.

With the same purpose, we will here in this Revised Brief and Argument bring to the attention of the Court the errors and inaccuracies in statements of the evidence by counsel for the respondents.

Heretofore it was not claimed by respondents that the Tri-City Central Trades Council, or any other of the respondents, claimed authority to act

for the employees of petitioner in making its demands upon petitioner or in calling the "strike".

Counsel for respondents, appreciating the importance of this fact, states evidence in the form of quotations quite unsustained and unjustified by the record. He states, page 27 of his brief,

> "Complaint has been made in the case at bar that such Council had no authority to protest against the reduction of the scale, even though the superintendent himself testified that 'probably 80 or 90 per cent. of those employed on the day the strike was ordered *were members of various locals affiliated with such Trades Council'* (AB 41)."

Walcher was the petitioner's superintendent. The only testimony given by him on this subject appears under cross-examination at page 41, as follows:

> "When we closed in November all our employees were discharged; they were laid off indefinitely on account of closing down the plant. When we opened April 6, we employed whoever we saw fit; whoever *employed* (applied) for employment at the gate. Started the plant the same as a new plant. We only had called for, in round numbers, 300 men, and laid off approximately 1300 men. *80 or 90 per cent. of the employees were old men. I assume these men were members of various organizations; I can't state definitely as to that.*"

The Court will not find in the testimony of Mr. Walcher, as it appears on page 41 of the record, "probably", or "of those employed", or "on the day the strike was ordered", or "*members of locals affiliated with such Trades Council*", and all contained in respondents' quotation of this evidence. Did counsel believe that this misquotation would escape attention?

Counsel states, on page 38,

> "In the case at bar the Tri-City Central Trades Council represented the employees

> other than the strike-breakers. Walcher, the superintendent, testified that probably 80 or 90 per cent were members of locals affiliated with the Tri-City Central Trades Council (AB. 41)."

As before stated, this statement utterly and affirmatively differs from the evidence as it appears on page 41 of the record. Counsel further states, on page 38,

> "According to the testimony of the president and secretary of the Central Trades Council, such organization acted for and on behalf of employees in such mill. Galloway testified, 'After the Council received complaints about reduction of wages, arrangements were made by the different trades that had received these reductions to have a joint meeting, and they brought their complaint jointly before the Central Body and asked for its co-operation' (AB. 41). His testimony agrees with that of Superintendent Walcher, who said: 'Eighty or 90 per cent of the 350 men employed when the strike took place were members of different locals affiliated with the Central Trades Council' (AB. 41)."

Again containing statements not contained in the record, notably, "*such organization acted for and on behalf of such employees in such mill*", and also, "*80 or 90 percent of the 350 men employed when the strike took place were members of different locals affiliated with the Central Trades Council.*"

In the same connection counsel for respondent says:

> "Cavanaugh, the secretary, testified that, at a meeting held on April 15, a communication was received requesting that a special meeting be called of all trades working at the American Steel Foundries, to arrange some plan to have the wages reinstated, and a meeting was called for the 19th. At such meeting 10 or 12 trades were represented."

He does not state from whom the communication was received, leaving it to be inferred that the communication might have been from the employees of the petitioner. The witness stated, at page 57 (Printed Record), that the communication was received from the Machinists' Union. He did not say from the employees of the petitioner. The testimony of Superintendent Walcher is again misquoted, and through the form of misstatement it is attempted to give character to the testimony of Galloway, the president, and Cavanaugh, the secretary, not justified by the record.

So far as the record shows there was but one employee of the petitioner, a member of any machinist's union, and that one went out in response to the "strike" called by the Trades Council, i. e., Thomas Churchill, who testified, page 53,

> "At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I was not completely satisfied. It was the best thing I had to take at the time being and I have not had anything better since. I did not get a better job. *I quit because these fellows asked me to go out.*"

It is evident from this testimony that no machinist made any complaint or requested a meeting to be called of trades working at the American Steel Foundries.

On page 56 counsel says,

> "Complaint has been made in the case at bar, that such Council had no authority to protest against the reduction of the scale—even though the superintendent himself testified that probably 80 or 90 per cent of those employed on the day the strike was ordered were members of various locals affiliated with such Trades Council (AB. 41)."

again containing the misquotation above referred to.

On page 59, however, dealing with the same statement of the superintendent, counsel quotes Mr. Walcher as follows:

> "We had approximately 300 men—80 or 90 per cent of those were old men; I assume these were members of the various labor organizations" (AB. 41B).

Even in this partially correct quotation counsel adds the article "the" before "various labor organizations" and inserts the word "labor" before the word "organizations." Both "the" and "labor" were interpolated, though not in the testimony as shown on page 41. It must have been intended to give some form of identification or application to the "labor" organizations forming the Trades Council, which the witness did not do and did not intend to do; and counsel in the same quotation omits deliberately the further statement of the witness,

> "I can't state definitely as to that."

On page 67 counsel says,

> "In the case at bar, 'after a request from those employed in the mill for co-operation, the Executive Board selected the pickets' (AB. 44-57)."

We have several times and with great care examined the record from page 44 to 57 inclusive, as well as indeed the whole record, and find nowhere any such evidence as is here quoted. The only evidence appearing in the record which in the remotest way approaches this misquotation of counsel appears in the testimony of Galloway at the top of page 44 of the printed record and is as follows:

> "After the Council received complaints about the reduction of wages arrangements were made by the different trades that had received these reductions to have a joint meeting and they brought their complaint jointly before the Central Body and asked for its co-operation in the matter of arbitration with the foundries."

and on page 45 the following:

> "A Committee of the joint board of the Tri-City Central Trades Council selected these pickets; rather they were from the different crafts that were connected with the reduction in wages."

How counsel for respondents could have distorted the evidence in the record in the manner as above quoted is inconceivable. There is not at the point indicated in his brief, nor anywhere else in the record, a statement that there was any request from the employees in the mill for "co-operation." There was no such testimony by any witness in the entire record. Nor can the expression "rather they were from the different crafts that were connected with the reduction in wages" be translated to mean "those employed in the mills". What evidently was referred to in the testimony of Galloway, namely "rather they were from the different crafts that were connected with the reduction in wages" meant machinists or foundrymen being of the crafts, members of which were employed by petitioner and imported from Missouri for purpose of slugging and beating petitioner's employees.

Counsel says on page 71 of his original brief "Churchill testified he quit because he was a member of 'the machinists' union' (AB. 52)". Churchill did not testify to any such thing. We find the evidence of Churchill on page 52 of the record,

and with reference to why he quit he says *"I quit because these fellows asked me to go out."* Who were "these fellows?" Not the Machinists' Union. They were the Trades Council. The Machinists' Union did not call the strike. The Trades Council called the strike. That is admitted, and the handbill appearing on page 24 of the record shows the strike was called by the committee of the Trades Council.

On page 104 of counsels original brief, he states "Cook testified that he quit because of the reduction of wages". On direct examination his testimony was, "I quit because they cut my wages". On cross-examination Cook said (Printed Record, 56):

> "I did not quit as soon as I got my pay but worked four or five days longer and *I quit because they said there was a strike on.* I just felt as it was right for me to come out."

Why counsel in this manner misstated the testimony of Cook must be apparent.

On page 107 of his original brief, counsel for respondent, again stating the testimony of Walcher, the superintendent, also made the amazing misquotation:

> "Eighty or 90 per cent of the 1600 men were members of the various locals affiliated with the Central Trades Council when the plant closed down,"

and proceeds to state

> "Then a like per cent of the 350 employed when it opened up were likewise members of the various locals represented by the said Central Trades Council" (AB. 41).

And he further says:

> "According to the testimony of the president and secretary of the said Council those employees affected by the reduction made the complaint, and asked the co-operation of such Council (AB. 44-57)."

The testimony of Walcher on this point the Court will find at page 41 of the record.

We have carefully followed counsel for respondents in his presentation of the evidence (?) and feel safe in saying that even the erroneous and insupportable misquotations do not sustain the contention that employees of the petitioner at any time were members of or were represented by the Trades Council in calling the strike at the petitioner's plant and in seeking to coerce the petitioner into a change of wages and conditions then satisfactory to the employees.

Counsel for respondents continued the practice of misquotation in the supuplementary brief filed by him. At pages 18 and 19 of his supplementary brief, counsel quotes from the testimony of Galloway, president of the Tri-City Central Trades Counsel (Printed Rec., 43-44).

Without the use of asterisks he omitted the following in the paragraph from which he quoted after: "As Chairman I went in to see Mr. Walcher and stated the case to him",

the following:

> "He said they didn't have any grievances there that he knew of; that none of his employees had said anything to him that they were dissatisfied; he asked me who the Committee was; if it was any of his employees; I told him not at the present time; that there had been, but they were representatives of the different local unions; he stated that he

would not meet with any representative of organized labor; if anybody around that plant felt mistreated or had any grievances to come in as individuals and they would treat with them, so I told him that if that was the way he felt about it I would have to report the same back."

He also omitted from the same paragraph the following after: "It was reported back to the joint board and a strike was declared on the plant", the following:

"Bills were printed and circulated to the different organizations and passed about that they had reduced the wages of these different crafts, something like eight or ten crafts I believe."

And then counsel for the respondents in the same supplementary brief further quotes from the testimony of Galloway a paragraph appearing on page 45 of the Printed Record, but omits the following, which immediately follows his potation in the same paragraph:

"On the seven or eight occasions I was down there *I went down to see how things were going and went down to see that things were going right.* These pickets were stationed adjacent to Neidringhaus Avenue around the depot. That is one of the main streets leading from the plant.

"I am a plumber and were never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there. We circulated some bills (witness handed Exhibit 'B') that is a representation of the seal of the Tri-City Central Trades Council. This is one of the bills that was circulated that I referred to."

Counsel at page 19 of his supplementary brief, quotes from the testimony of Cavanaugh, Secretary of the Tri-City Central Trades Council (page 57, Printed Record) but omits the following referring to the Council: "They called a strike in this case".

Following immediately after the sentence "We had complaints from the men themselves working at the foundry" appearing on the same pages, he also omits the following from the same paragraph:

> "I couldn't state their names. I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

On page 20 of the brief Counsel quotes from the testimony of Walcher, appearing Printed Rec., 41. He quotes from a paragraph the following:

> "We ran the plant without any trouble with our men up until the morning of the 23rd of April."

He then omits the following from the same paragraph without the use of asterisks:

> "From the 24th of April on until the issuance of the restraining order the defendants were almost unbearable toward our employees; it reached the point where they were in fear of entering and leaving the works."

He also omits the following from the same paragraph without the use of asterisks:

> "Since the restraining order was issued every thing has been very peaceable and quiet and haven't had any trouble, our men entering

> and leaving the work; it would have been impossible for us to continue to operate the plant had this restraining order not been issued."

He also omits immediately following the paragraphs quoted the following testimony of Mr. Walcher:

> "Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from anyone in our employ."

Counsel in the same brief also quotes from the testimony of Holmes, witness for respondents, appearing at page 55, Printed Record, as follows:

> "I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

Immediately following this he omits the following sentence in the same paragraph:

> "I don't know what the reduction was. I didn't go back to find out."

He also omits the following from the testimony of the same witness on cross-examination on page 55 of the record:

> "I made application for work when the plant opened in April. I didn't get the work."

Counsel quotes from the cross-examination of Fortner, witness for petitioner, appearing at page 53 of the record. He used the expression "and was not molested" in his brief, while the record shows the expression used by the witness was "no-

body assaulted me", and counsel omits what immediately followed in the same paragraph:

> "It was either Ishman, Lamb or Holmes that told me there was a strike on and I had better not work there. I quit on the 25th. After that time I got reports to the effect that they said if I started working again they would knock my head off. That came from an outsider."

Why should counsel substitute "was not molested" for "nobody assaulted me"? The inquiry answers itself.

Counsel also, on pages 31 and 32 of his brief, quotes from the testimony of various witnesses for the petitioner to neutralize the evidence on the subject of violence and the use of force. The record is so full of indisputable evidence and proof of violence, assaults, and thuggery that it is unnecessary to comment on counsel's quotations in that regard. We are only surprised he should for one moment think that his garbled quotations from the testimony of the witnesses would escape refutation by the record itself.

CONCLUSION.

Injunction as decreed by District Court should stand.

When a conspiracy and combination are entered upon to do an unlawful act, the presumption is, the methods employed for its accomplishment will be correspondingly unlawful. When, as in the case at bar, the methods for the accomplishment of unlawful combination and conspiracy are illegal and lawless (as proved by the evidence and

judicially found by both the District Court and by the Circuit Court of Appeals), it is a fair presumption that similar unlawful and illegal methods will be continued unless restrained, and will be resumed if the restraint should be released. The decree permanently enjoining such lawlessness and the further execution of an unlawful combination and conspiracy should not be left to particularity of language or fine distinction of expression, but should be general and as comprehensive as possible to make certain the efficacy of injunction and restraint. The modification directed by the Circuit Court of Appeals, if its affirmance is conceivable, will be an invitation to the respondents to renew and continue their unlawful conspiracy and combination, and when haled into court in proper proceedings for contempt, to seek exemption from punishment by casting doubt upon the proper interpretation of the terms "lawful" and "picketing", and persuasion and as said in Barnes *v.* Typographical Union, *supra,* "would leave such question to the individual notions or bias of the particular judge." Judge Humphrey, who decided the case, having died, petitioner would lose the benefit of the knowledge and information which came to that Judge in his judicial capacity and which naturally and properly would be considered in the deliberations on any contempt proceeding instituted to punish a violation of an injunction in the modified form as proposed by the Circuit Court of Appeals.

In the light of the evidence of brutality and lawlessness, any modification, it seems to us, would be most unfortunate and most serious for both the petitioner and its employees. It would give an encouragement to interfering organizations hav-

ing no relation to the employer, and, as in the case at bar, made up of barbers and barkeepers, and clerks and workmen in various trades not related in any way to the business or enterprise of the petitioner, wherever resident, in Illinois or out of Illinois, to interfere with the business, property and operations of the petitioner and of its employees.

Up to and on April 24, 1914, the petitioner operated its plant in peace. Between the petitioner and its employees there was amity and accord. The employees of the petitioner had made no complaint of either wages or conditions; they were satisfied and contented. The respondent, the Tri-City Central Trades Council, claiming to represent certain trades and crafts, but not to represent any of the employees of petitioner, on April 20, 1914, through a committee headed by its president, Earl Galloway, none of whom was an employee of the petitioner or authorized to speak for any of the petitioners' employees then proceeded to put into effect the unlawful combination and conspiracy herein alleged, proved and adjudicated and to injure the petitioner and its employees and the petitioner's property, plant and business as shown in the record.

As hereinbefore stated, the petitioner has not sought and does not claim any right to interfere with or limit the right of any of its laborers or any employees to quit its employ; or to become a member of any labor organization; or singly or collectively to make demands for changes in wages or working conditions; or by joint action with others of its employees to call a strike as a means for securing a change in wages or working conditions; but petitioner does contend and does insist that the Tri-City Central Trades Council had no right, on its own initiative and without previous

authority of the petitioner's employees, to make demands upon the petitioner for a change in wages and upon petitioner's refusal to deal with its committee to call a strike against the petitioner, force the employees of the petitioner who were satisfied with their wages and working conditions and had not made any complaint, to quit their work, leave petitioner's employ, break their contracts of employment, and compel petitioner to close down its plant, to the great injury of its business and property.

If the practice and proceedings of the respondents in this case are sustained by affirmance of the decision of the Circuit Court of Appeals, then property and business are indeed insecure; both the employer and employee are in a position of helplessness and terrorism, and the vital interests of industry and of business and of capital and of labor as well seriously menaced.

We resspectfully submit that the decree of the Circuit Court of Appeals modifying the injunction of the District Court be reversed and the final decree of the District Court be affirmed.

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Of Counsel.

GENERAL NO. 25809. TERM NO. 2.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921.

AMERICAN STEEL FOUNDRIES,
Petitioner,

vs.

THE TRI-CITY CENTRAL TRADES COUNCIL, *et al.*,
Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh District.

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in

REVISED BRIEF AND ARGUMENT FOR PETITIONER.

Also

Copies of Opinions of District Court and Circuit Court of Appeals

and

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Judge Humphrey's Opinion.

The law is very well settled, I think so well settled that there can be no dispute with the court or between counsel, as to the rights of the parties. It is not a new question; not so old in this country as in Europe, but still it is not a new question even in this country.

Men have a right to combine their capital and create artificial bodies for the carrying on a great works, works so great no one man could do it. That is a combination. The law recognizes it. It is legal. The progress of the world has been marked more among the nations which permit this combination than anywhere else in the world.

In order to carry on these great works, something besides capital is necessary. Something more important than capital; something more human than capital; something that touches the people more tenderly than capital. That is labor. So the law provides, wisely provides, that a man who has labor to sell may combine with his fellows for the purpose of helping his own condition, or getting more for the commodity which he brings to the public service than he would if he were not organized, and that brings us near to the point of conflict. The manufacturer, the corporation, has work to do. It offers a price, the price which in its judgment the market would justify. The man or men who have the labor to sell try to meet that price. They cannot do it always. They say we will exercise the privilege, which the law gives us, to refuse to work for you. A and B join with C, D, E and

F, and they have a right to do that and say they won't work for you individually, or in a body. Now that is a lawful right, but the very statement of that right contemplates that any other man, or any other body of men, organized or unorganized, has a right to sell his or their labor at the price offered if he wants to.

Now you see how absurd it would be to affirm one of these doctrines and disaffirm the other. The very basis of law on which the labor union exists contemplates that the man who does not belong to the labor union has the same right to exercise his own judgment as to the price at which he will sell his labor. When you consider all these things, the man's home necessities, the man's wants, the size of his family, his condition in life, whether or not he has a nest egg laid away, whether or not he has a bank account, is the controlling feature with him. One man moves from one motive and refuses; another man moves from another motive and says, "Yes, I will work at the price you offer; the wages are satisfactory and the conditions are satisfactory." Then we are up to the time when the law is called upon to decide whether the man or the group which refused to work shall say that the man who wants to work shall not work. You see what an absurdity it would be to affirm that doctrine.

This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trades of life, where the thing to be bought and sold is not

labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests, viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We wouldn't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does

not belong to your combination shall have the same right to work at a different rate. Now that is the law, and there is no other view to take of it. This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it. When the company several months later undertook to run on a different scale of wages they contracted with certain men, who did not belong to the union, to work for them. These men have said upon the stand they were willing to work; the wages were satisfactory; the conditions were satisfactory, but that they didn't work because they were afraid of the defendants.

Now a man who doesn't want to work at a certain wage has a right to withdraw; another man who does want to work under those conditions and for those wages has an equal right to work without being interrupted, and the first man shall not interfere with the second.

Work is the condition of us all. No man is of any account in this world without it; no matter what character the work may be. We are all workers or we are no good. Every man must judge for himself as to the contract of labor which is satisfactory to him. He may work, or he may decline to work, but he shall not interfere with his neighbor who desires to work, for the Government will protect such neighbor and a government that will not protect such a man isn't fit to live, and, in my judgment, will not permanently endure.

The proof here sustains the averments of the bill as to the illegal combination; such a combination

cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be violent or peaceful.

However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the condition under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get to him in the morning, or in the evening, or at the lnuch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law, and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There could be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to

him, you don't need a force of fellows to go with you.

Counsel for complainant may prepare an order finding the averments of the bill sustained and extending the injunction, making the restraining order an injunction against the union, its officers and all other persons who have had any part, as shown by the evidence, in the execution of the unlawful combination.

The injunction may go this much further; it may prohibit absolutely picketing for the purpose of executing this unlawful purpose. It may extend also to all persons who shall engage in helping or abetting the unlawful combination, whether the knowledge came to them before or after the issuing of this injunction. Let the injunction be printed and posted liberally in the vicinity of the works.

Perhaps I ought to say to you gentlemen who are the officers of the defendant union, that the court regards it as your duty to explain to those who are not here and to those who are here, if necessary, just what the purpose of this order is, and that it is their duty to obey it, for the court will find some means of enforcing its order.

Circuit Court of Appeals Opinion.

Before Mack, Alschuler and Evans, Circuit Judges.

Appellants, herein called defendants, appeal from the final decree entered in favor of appellee, herein called plaintiff, enjoining defendants as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents, and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Ardridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American

Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

Plaintiff instituted this suit to prevent alleged threatened injury to its business and threatened destruction of its manufacturing plant, located at Granite City, Illinois, claimed to be worth $1,000,000, which it alleges the Tri-City Trades Council, a labor organization and other defendants, former employees of plaintiff or members of the Council were injuring and threatening to destroy. It alleges the Tri-City Trades Council attempted to force plaintiff to raise the wage paid its employees, and to ac-

complish its object called a strike of plaintiff's employees. In the course of the strike picketing was resorted to, and the defendants sought the support of non-striking and prospective employees. Plaintiff further claimed that its employees were assaulted by defendants and by those engaged in picketing the shops, and that prospective employees had been so intimidated by defendants that they refused to enter plaintiff's employment.

The gravamen of the plaintiff's bill is found in the following, therefrom:

> "Your orator further represents that the said defendants have combined and conspired to prevent your orator from employing skilled laborers at its plant, although such skilled laborers and your orator have agreed upon terms of employment that are mutually agreeable and satisfactory; that in carrying out such combination and conspiracy the defendants began picketing said plant of your orator on or about April the 23d, 1914; that the said defendants on April 23d and since that time have caused various numbers of men or pickets, to wit: five to thirty men to be stationed adjacent to the main gate of your orator's said plant, which said pickets from that day until the present time have threatened to assault, mistreat and injure various of the employees of your orator unless said employees ceased from their work; that said defendants so combining did on April 29, 1914, cause two of your orator's employees to be assaulted by said pickets," etc.

Defendants denied any and all acts of violence or assaults of any nature. On the other hand, they claimed that strike-breakers attempted to shoot the striking employees, and were urged so to do by representatives of plaintiff.

Defendants also denied the existence of any unlawful conspiracy among them, but did admit

> "that said Tri-City Central Trade Council did place certain ones on certain streets and avenues leading to said plant charged with doing picket duty, but such ones were stationed 100 yards from such mill and they were instructed to notify all persons who sought to enter the plant, that there was a strike on, because of such reduction in wages, and such pickets were instructed to use all honorable means to persuade such ones to not enter such plant, and not to take the places of the laboring men, who had gone on a strike on account of such reduction of wages."

The District Judge in rendering his opinion said:

> "This evidence clearly shows that this union, this Trades Council, by the testimony of its officers entered upon the work of preventing this complainant from getting men to run its factory, run its plant except upon the condition that it pay a certain scale, the November scale. That combination was illegal."

Speaking of picketing, he said:

> "However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position, and having these cases frequently before me, has taught me that there is no such thing as peaceful picketing."

Defendants attack the decree on three grounds:

(a) The evidence does not justify the issuance of any injunction.

(b) The restraining order is too broad and restrains defendants from doing lawful acts.

(c) The Court is without jurisdiction, because the amount involved does not exceed $3,000.

Evans, Circuit Judge, delivered the opinion of the Court.

Defendants' claim that the court was without jurisdiction is without merit. The necessary diversity of citizenship appears. The amount involved exceeds $3,000. It was not necessary that $3,000 worth of property should be destroyed before the Federal Court acquired jurisdiction. The alleged threatened damage far exceeded the statutory sum necessary to give the District Court jurisdiction.

Defendants contend that the evidence did not justify the Court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the Court. It is apparent that a situation had developed where fights had occurred and threats had been made which if carried out would have resulted in the destruction of property. The district judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.

But the Court also enjoined the defendants:

> "from picketing or maintaining any picket or pickets on or about the streets leading to the premises of the plaintiff."

And the order continued:

> "It is further ordered * * * that the said defendants * * * be and are perpetually restrained and enjoined * * * from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and

> also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid."

The obvious effect and purpose of this decree was, among other things, to prevent all picketing by the defendants or others similarly interested, and to prevent these parties from persuading their fellow employees to join them in their effort to secure what the strikers apparently considered the laborers' just demands.

In *Iron Molders' Union*, 125, *Milwaukee*, v. *Allis-Chalmers Co.*, 166 Fed. 45, the rule is so well stated that we quote from it the following:

> "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished. In the guise of picketing, strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault. But from the evidence it can always be determined whether the efforts of the pickets are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgments. *Prohibitions of persuasion and picketing, as such, should not be included in the decree.*"

Labbatt in his work on Master and Servant, Vol. 7, page 8364, says:

> "Attendance in the vicinity of the employer's place of business for the purpose of obtaining information as to those at work there, or of communicating the information that a strike is in progress, to those who may resort for employment, is uniformly regarded as lawful even where the right to maintain pickets for the purpose of persuasion is denied."

The same writer further says:

> "The preponderance of opinion is to the effect that attendance even in numbers, for the purpose of lawfully persuading others not to work, is permissible, so long as it is not carried on in such a manner as to intimidate persons at work, or seeking employment, or to subject them to undue annoyance, or to interfere with the free access to the employer's premises."

Further authorities in support of the rule laid down in the *Iron Molders Union* v. *Allis-Chalmers Co., case, supra,* are *Gray* v. *Building Trades Council,* 91 Minn. 171; *Karges Furniture Co.* v. *A. W. Local Union,* 165 Ind. 421; *Everett* v. *Typo. Union,* 105 Va. 188; *In re Heffron,* 179 Mo. App. 639; *Jones* v. *Maher,* 116 N. Y. Supp. 1126; *Jones* v. *Van Winkle Gin & Mach. Works,* 131 Ga. 336; *Pope Motor Car Co.* v. *Keegan,* 150 Fed. 148.

But it is contended that the decree in these respects was proper because

(a) The restraining order does not prohibit picketing *per se,* but restrains defendants from carrying out an unlawful conspiracy to destroy plaintiff's business; that in order to prevent the defendants from accomplishing the unlawful object of the conspiracy, it was necessary for the Court to restrain the defendants from picketing the plaintiff's works, and prohibit them from arguing their cause with plaintiff's employees.

(b) Defendants were not plaintiff's employees, but were mere outsiders, intermeddlers who were not truly representing the employees, but were trouble makers, fomenting strife and trouble where labor conditions and wages were entirely satisfactory to the employees.

Plaintiff's contention that a court may restrain lawful acts of striking employees when committed to carry out the purpose of an unlawful conspiracy to destroy the employer's business is supported by many authorities. Among them are *Sailor's Union* v. *Hammond Lumber Co.*, 156 Fed. 450; *In re Debs*, 158 U. S. 564; *Barnes* v. *Typo. Union*, 232 Ill. 424; *Karges* v. *Woodworkers Union*, *supra*.

If the record disclosed the existence of an unlawful conspiracy on the part of the defendants to injure or destroy plaintiff's property the Court would be clearly justified in restraining lawful as well as unlawful acts committed in furtherance of such a conspiracy.

If the purpose of the undertaking complained of were purely and simply, or even primarily, interference with the plaintiff in the conduct of its business as alleged, no act however innocent in itself, directed to that end can be said to have a lawful purpose for its doing. Indeed, it may well be said that any act directed to that end is not a lawful act. If, on the other hand the object of the undertaking is unlawful, then the acts calculated to effectuate the object do not necessarily become unlawful merely because they interfere with the plaintiff's conduct of its business.

The right to strike to secure higher wages and improved conditions of labor is too firmly established to necessitate further elucidation. From the record here we can reach no other conclusion than that the object of this strike was to secure for plaintiff's employees the November wage scale of the union. Nothing appears in the record to indicate that this was not in good faith, or to raise the suspicion that the strike was a mere cloak to cover a deliberate

purpose to interfere with the plaintiff's conduct of its business, or to injure and destroy its business and property. The purpose being lawful, if unlawful means are used to effectuate it, such means cannot be made to reach back and taint the purpose itself with unlawfulness, and thus render unlawful all the acts in its furtherance.

In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed, as this Court has held, to ascertain whom the late employer:

> "has persuaded or attempted to persuade to accept employment,"

and persuasion may be used to induce them to refuse or quit the employment. As stated further in the *Allis-Chalmers case:*

> "The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. * * * Molders, having struck, in order to make their strike effective, may persuade (but not coerce) other molders not to work for less wages or under worse conditions than those for which they struck, and not to work for their late employer at all, so that he may be forced to take them back into his foundry at their own terms."

Undoubtedly picketing and persuasion would interfere with plaintiff's conduct of its business, in that it would make it more difficult for it to retain old employees and to hire and keep new ones. Indeed, the very act of striking often seriously interferes with that "free and unrestrained control and operation of the employer's business" which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the

strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike.

The laborer may be strictly within the rights although he obstructs the "free and unrestrained control and operation of the employer's business." The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employees by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business, any interference with that labor is an interference with the employer's business. But whether the interference with the business is lawful or unlawful depends upon the facts in each case.

The order in the instant case fails to recognize this difference between the *lawful* means of interfering with another's business as an incident to the party's own right and *unlawful* means adopted by the same party. Methods may be considered lawful even though the employer's business is interfered with, because such methods are incidental to the right of the employee, which right should be and is recognized as equal to the right of the employer.

Plaintiff's further contention that the defendants were not its employees at the time of the strike, and therefore had no right to picket or persuade by argument those about to enter plaintiff's employment is not well taken. It is true, a striker is not technically an employee. The relation of employer and employee is temporarily suspended during a strike. The situation has been described as

> "A relationship between employer and employee that is neither that of a general employer and employee, nor that of employer and employee seeking work from them as strangers."

Neither strike nor lockout fully terminates during the strike the relationship between the parties.

Among the defendants in this case there were some former employees. Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest. Under these circumstances, it cannot be said that the labor organization was an intermeddler or that its course was contrary to the wishes of its members or the wishes of the plaintiff's employees.

In so far as the decree restrains *all* picketing and *all* persuasion and all interference with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this Court for the modification of the decree in the *Allis-Chalmers case* will afford sufficient and proper guidance for the modification of the decree herein.

The decree of the District Court is reversed, with direction to modify the same, and to enter a decree, in accordance with the views herein expressed.

Original injunction decree in Allis-Chalmers Company vs. Iron Molders Union, No. 125.

CIRCUIT COURT OF THE UNITED STATES

Allis-Chalmers Company,
Complainant,
vs.

Iron Molders Union No. 125 of Milwaukee, Wis., Iron Molders Union No. 375 of South Milwaukee, Wis., Iron Molders Union No. 446 of Milwaukee, Wis., John R. O'Leary, William Schwab, Thomas R. Hanna, H. Harbicht, M. Katzbaum, Robert Winkler, John Merz, David Lonergan, William F. Weber, Edwin Lecher, Lally Kuchysky, Joseph Plaschek, E. A. Morrison, Peter Kuczynski, John Lutz, Patrick Devine, Lewis Faast, Jim Murphy, Geo. Anderson, Sr., Rud. Nau, Jno. Brzezan, Jim Donohue, Joe Stringer, Alb. Piotrowsky, Jno. F. Thomas, Rob. Emerson, Art. Ladwig, Rich. Venohr, Emanuel Dapper, John Hanley, Bern. Roosbeek, Claude Kahl, Dan Lonegran, Frk. Burzynski, Austin Slattery, Tom Tobin, Edw. Haacke, Gus. Priegel, Wm. Priegel, Hugo Bloecker, Tom Maynard, Peter Van Shooten, Joe Stahoviak, Pete Kramer, Mike Kelly, Edw. Bryan, Jos. Whittington, Paul Paulsen, Louis C. Miller, Wm. Halpin, Henry Finger, Wm. Bluhm, Herman Dempke, E. Lang, B. Marren, J. Alter, G. Anderson, John Schafe,
Defendants.

In and for The Eastern District of Wisconsin.

This cause came on to be heard at this term of court and was argued by Turner, Hunter & Goff with W. J. Turner as counsel for complainant, and Rubin & Zabel for defendants; and thereupon it is ordered and decreed by the court that the defendants IRON MOLDERS UNION NO. 125 of Milwaukee, Wis., IRON MOLDERS UNION NO. 375 of South Milwaukee, Wis., IRON MOLDERS UNION NO. 446 of Milwaukee, Wis., JOHN R. O'LEARY, WILLIAM SCHWAB, THOMAS R. HANNA, HENRY HARBICHT, M. KATZBAUM, ROBERT WINKLER, JOHN MERZ, DAVID LONERGAN, WILLIAM F. WEBER, EDWIN LECHER, LALLY KUCHYSKY, JOSEPH PLASCHEK, E. A. MORRISON, PETER KUCZYNSKI, JOHN LUTZ, PATRICK DEVINE, LOUIS FAAST, JIM MURPHY, GEORGE ANDERSON, SR., RUD. NAU, JNO. BRZEZAN, JIM DONOHUE, JOE STRINGER, ALBERT PIOTROWSKY, JNO. F. THOMAS, ROB. EMERSON, ART. LADWIG, RICH. VENOHR, EMMANUEL DAPPER, JOHN HANLEY, BERN. ROOSBEEK, CLAUDE KAHL, DAN LONERGAN, FRK. BURZYNSKI, AUSTIN SLATTERY, TOM TOBIN, EDWARD HAACKE, GUS PRIEGEL, WILLIAM PRIEGEL, HUGO BLOECKER, TOM MAYNARD, PETER VAN SHOOTEN, JOE STAHOVIAK, PETE KRAMER, MIKE KELLEY, EDW. BRYANT, JOS. WHITTINGTON, PAUL PAULSEN, LOUIS C. MILLER, WILLIAM HALPIN, HENRY FINGER, WM. BLUHM, HERMAN DEMPKE, E. LANG, B. MARREN, J. ALTER G. ANDERSON, and each of them, their confederates and each and every one of them, and the serv-

approaches adjoining or adjacent to or leading to said premises, and from picketing the said complainant's places of business or the homes or boarding houses or residences of the said complainant's employees.

6. From interfering with the said company's employees in going to and from their work.

7. From going singly or collectively to the homes of the said company's employees for the purpose of intimidating or threatening them or collectively persuading them to leave its service.

8. From enforcing, maintaining or aiding any illegal boycott against the said company, its agents or employees.

9. From endeavoring to illegally induce people not to deal with the said company, its agents and employees.

10. From perventing or attempting to prevent by threats, intimidation, persuasion or in any other manner any person or corporations from performing work for said complainant and from doing business with it.

11. From intimidating or threatening in any manner the wives and families of said employees at their homes or elsewhere.

12. From doing any of the aforesaid acts or any other acts for the purpose of compelling and inducing or attempting to compel or induce the complainant by threats, intimidation, force or violence, against its will or the will of its officers, to employ or to discharge any person or persons whomsoever and especially to employ members of said unions or discharge persons who are not members of said unions.

ants and agents of the said defendants and each of them, and all persons aiding or abetting said defendants or any of them, and all persons now or hereafter aiding or abetting said defendants or any or either of them, and all persons now or hereafter confederating with or acting in concert with said defendants or either or any of them, or their servants or agents, refrain and desist

1. From in any manner directly interfering with, hindering, obstructing, or stopping the business of the said complainant, or its agents, servants or employees, in the maintenance, conduct, management or operation of its business.

2. From compelling or inducing or attempting to compel or induce by threats, intimidation, force or violence any of the said company's employees to fail or refuse to work for it, or to leave its service.

3. From preventing or attempting to prevent any person or persons by threats, intimidation, force or violence, from freely entering into or continuing in the said company's service.

4. And from congregating upon or about the company's premises or the streets, approaches and places adjacent or leading to said premises for the purpose of intimidating its employees or preventing or hindering them from fulfilling their duties as such employees or for the purpose or in such manner as to induce or coerce by threats, violence, intimidation or persuasion, any of the said company's employees to leave its service or any person to refuse to enter its service.

5. From congregating upon or about the company's premises or the sidewalk, streets, alleys or

13. From combining, associating, agreeing, mutually undertaking, concerting together or with other persons for the purpose of doing or causing to be done any of the aforesaid prohibited acts.

14. From combining, associating, agreeing, mutually undertaking, concerting together or with other persons for the purpose of preventing or hindering the complainant from doing or performing any unlawful act in the conduct of its aforesaid business or for the purpose of injuring the complainant in its aforesaid business, or of compelling the complainant against its will from doing or performing any lawful act or from injuring the said complainant in its trade and business.

15. From directing and abetting or counselling any acts whatsoever or in any manner whatsoever the conspiracy and combination found by the court to exist, to prevent the complainant and its officers and employees in the free and uninterrupted control and direction of its business and affairs and to prevent the complainant from doing or performing any and all lawful acts in the conduct of its business and to compel the complainant against its will from doing and performing its lawful business and to prevent the complainant from doing or performing all lawful acts in the conduct and management of its business.

16. From by threats, intimidation, persuasion, force or violence compelling or attempting to compel or induce any of the apprentices in the employ of the said complinant to break their contracts and leave the employ of the said complainant.

And it is FURTHER ORDERED and DECREED that the said complainant be allowed its

full costs in this suit taxed at the sum of Four Hundred and thirty-eight dollars and twenty-nine cents, for which execution will issue, except as against the defendant unions.

Dated, May 20, 1907.

BY THE COURT:—

(Signed) A. L. SANBORN,

Judge.

Let the foregoing decree be entered.

(Signed) A. L. SANBORN,

Judge.

May 20, 1907.

Endorsed: "Signed, recorded and enrolled
May 20, 1907.
Edw. Kurtz, Clerk."

Modified injunctive decree in Allis-Chalmers Company vs. Iron Molders Union, No. 125.

UNITED STATES CIRCUIT COURT

FOR THE EASTERN DISTRICT OF WISCONSIN.

ALLIS-CHALMERS COMPANY, *Complainant,*
vs.
IRON MOLDERS UNION No. 125, of Milwaukee, Wis., *et al.*, *Defendants.*
} In Equity.

Before Honorable JOSEPH V. QUARLES, District Judge. February 23, 1909.

This day came the defendants' counsel, Mr. W. B. Rubin and presented to the court a mandate of the U. S. Circuit Court of Appeals for this Circuit, setting forth that "in the term of October, in the year of our Lord one thousand and nine hundred and eight the said cause came on to be heard before the said United States Circuit Court of Appeals for the Seventh Circuit, on the said transcript of record and was argued by counsel; on consideration whereof, it is now ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be and the same is hereby reversed; and that this cause be and the same is hereby remanded to the said Circuit Court with directions to modify the decree by striking out "persuasion" and "persuading" from the fourth and seventh paragraphs; further modified by adding after "picketing" in the fifth paragraph "in a threatening or intimidating manner"; and it is further ordered that the said decree be vacated as to the

1st, 8th, 9th, 10th, 14th and 15th paragraphs, and the said decree is hereby affirmed as to the 2nd, 3rd, 6th, 11th, 12th, 13th, 16th and the modified 4th, 5th, and 7th paragraphs. And it is further ordered that the costs of this Court be divided equally."

Whereupon it is ordered by this Court that execution be and hereby is awarded against the complainant, Allis-Chalmers Company for the sum of Four hundred fifty-one dollars and ninety-four cents, one-half the costs in the said U. S. Circuit Court of Appeals.